WALTER OLSON: CHRISTIANS WHO WANT TO STONE YOU

REASON

Free Minds and Free Markets®

November 1998

CODES OF SILENCE

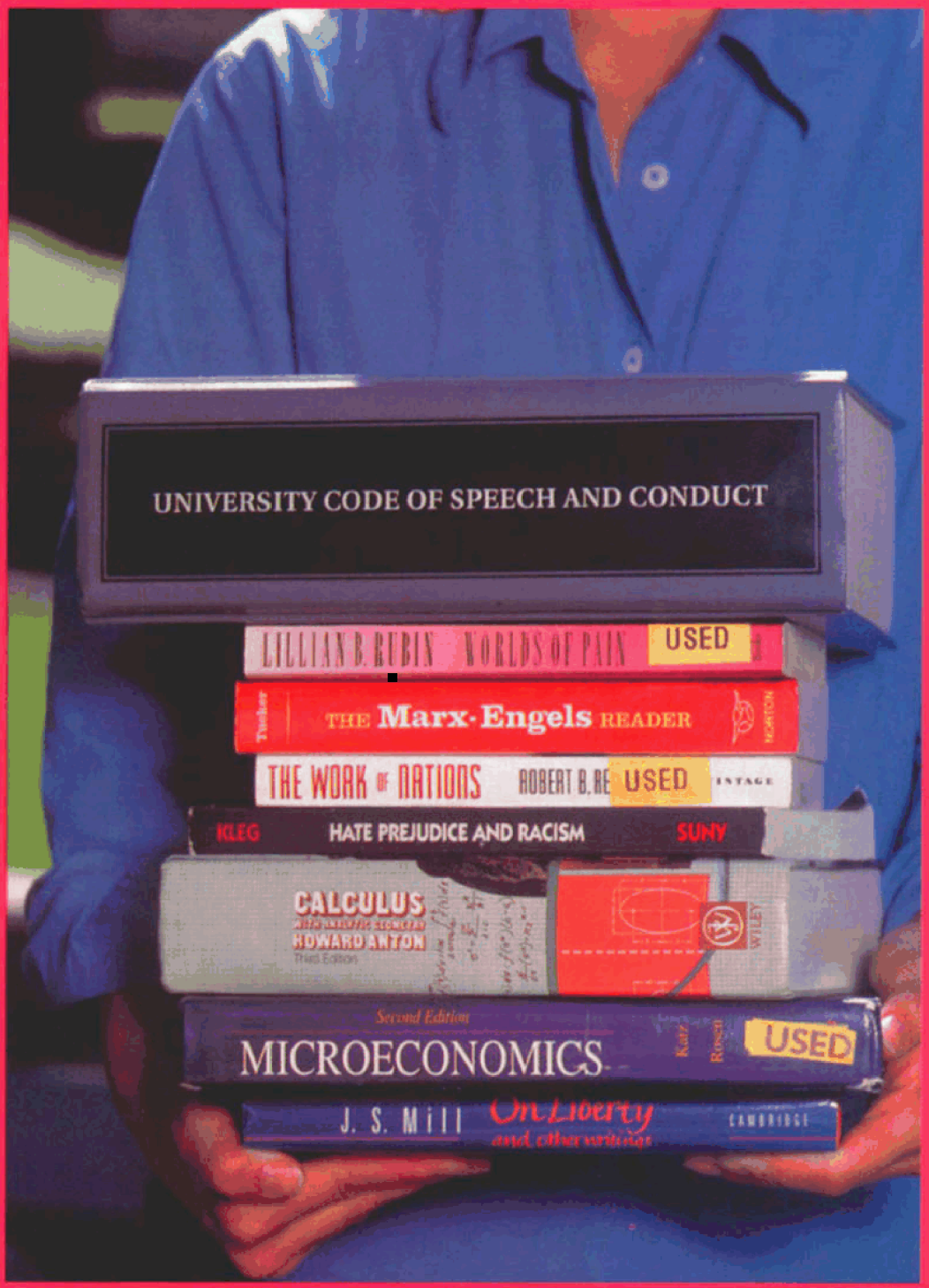
WHO'S GAGGING CAMPUS SPEECH—AND WHY
By Alan Charles Kors and Harvey A. Silverglate

WHY STATES HAVE STUPID TAX LAWS
By John Hood

PSST, WANNA BUY AN ASTEROID?
Kenneth Silber on property rights in space

THEN HOW 'BOUT A LIVER?
James V. DeLong on chronic organ shortages

GREEDY GEEZERS, NRA GIRLS WITH GUNS & SCANDALOUS STAINS
Michael W. Lynch on the D.C. scene



$2.95/$3.50 CAN
0 71896 46530 3
PRINTED IN USA

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

How do your investments stack up?

If you worry about protecting your savings and investments in these unpredictable markets, we have a solution...

Gold can be your hedge against fluctuating stocks and economic uncertainty. That's because gold is real. It's something that you can actually hold and control. It is an investment which does not depend upon anyone's promise to repay. And right now could be the best buying opportunity in 18 years.

Consider this:

- ***The stock market has reached its riskiest level since 1929.***
- ***Gold is trading just above its 18 year low.***
- ***The new "Euro currency" due out in 1999 could be devastating for the U.S. dollar.***
- ***The average annual price of gold from 1979 to 1997 has been $391—30% higher than it is today.***
- ***Experts agree that the Year 2000 computer chip problem could mean anything from a mild recession to a run on banks!***

Call ***Lear Financial at 1-800-965-0580*** to order your ***FREE 1998 Gold Investment Guide*** today. There is no obligation. Call now and we will also include a *free* subscription to *Insight,* a quarterly publication including the latest research on the economy and your finances. There may be no better time to buy gold.

Guaranteed lowest prices!

CALL NOW!!

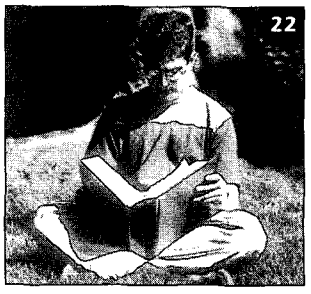
1-800-965-0580

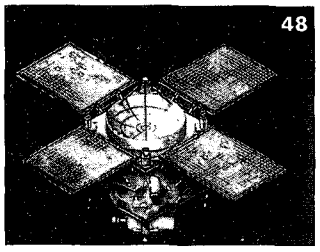
LEAR FINANCIAL · 429 SANTA MONICA BLVD · SANTA MONICA, CA 90401

LIC[illegible] TO LINE[illegible] ED
ELECTRONIC[illegible]

REASON®

Free Minds and Free Markets® November 1998/Vol. 30 No. 6





Editorials

4 Low Fidelity by Virginia Postrel
Russia's pretend capitalism.

7 Evasive Action by Jacob Sullum
The parsings of Clinton's legal team don't add up.

Features

22 Codes of Silence by Alan Charles Kors and Harvey A. Silverglate
Who's gagging free speech on campus—and why.

32 Tax Reform Schools by John Hood
Sobering lessons from tax-simplification campaigns in the states.

38 Darwin and Dickens by Nick Gillespie
Critics use evolutionary theory as a guide to understanding literature.

48 A Little Piece of Heaven by Kenneth Silber
The concept of extraterrestrial property rights is no longer a science fiction plot point.

Columns

54 Serving the President by Keith E. Whittington
When must the president obey a subpoena?

57 Organ Grinders by James V. DeLong
Federal "fairness" is apt to make a dangerous organ shortage worse.

60 Speaking Fees by Allison R. Hayward
Forbes vs. Forbes *at the FEC.*

Books

66 Dreams of Stagnation by Ronald Bailey
False Hopes: Why America's Quest for Perfect Health Is a Recipe for Failure, *by Daniel Callahan*
Life Without Disease: The Pursuit of Medical Utopia, *by William B. Schwartz*

69 Judges in the Dock by Stephen F. Williams
Out of Order: Arrogance, Corruption and Incompetence on the Bench, *by Max Boot*

71 Straussed Out by Loren E. Lomasky
Leo Strauss and the American Right, *by Shadia B. Drury*

Departments

8 Letters

10 Citings

18 Capital Letters: Intergenerational Work by Michael W. Lynch
Gabby geezers, girls with guns, and scandalous stains.

62 Reasonable Doubts: Invitation to a Stoning by Walter Olson
The perils of getting too cozy with theocrats.

74 Selected Skirmishes: Bull Clinton by Thomas W. Hazlett
The president's problems with the truth.

Cover photograph: Holly Freedman

REASON (ISSN 0048-6906) is published monthly except combined August/September issue by the Reason Foundation, a nonprofit, tax-exempt organization, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034-6064. Periodicals postage paid at Los Angeles, CA, and additional mailing offices.

Copyright© 1998 by Reason Foundation. All rights reserved. Reproduction or use, without permission, of editorial or graphic content is prohibited. Reason and Free Minds and Free Markets are registered trademarks owned by the Reason Foundation.

SUBSCRIPTIONS: $26 per year. Outside U.S. add $8/year surface, $55/year airmail. Address subscription correspondence to Reason, P.O. Box 526, Mt. Morris, IL 61054, 815-734-1102. For address change (allow six weeks), provide old address and new address, including zip code. **UNSOLICITED MANUSCRIPTS** returned only if accompanied by SASE. **INDEXED** in Readers' Guide to Periodical Literature, InfoTrac, Historical Abstracts, Political Science Abstracts, America: History and Life, Book Review Index, and P.A.I.S. Bulletin. Available on microfilm from University Microfilms International, 300 North Zeeb Rd., Dept. P.R., Ann Arbor, MI 48106. **Printed in the United States. POSTMASTER:** Send address changes to Reason, P.O. Box 526, Mt. Morris, IL 61054.

Low Fidelity

Russia's pretend capitalism

By Virginia Postrel

Bill Clinton had hundreds of affairs early in his marriage, he told Monica Lewinsky, but after he turned 40 he resolved to be faithful to his wife. He cut back on his sexual adventures. Yet Clinton still committed adultery, and he still got in trouble.

The conclusion is obvious: Fidelity is a crock, a "utopian religion," "the great illusion of our era." If it weren't for his blinkered devotion to the foolish ideology of fidelity, Clinton wouldn't be facing the possibility of impeachment.

Not even the fiercest Clinton defender would make such a ludicrous argument. No one in his right mind would claim that Clinton's reckless sexual behavior and its consequences stem from a zealous dedication to marital fidelity. And no one who offered such a patently ridiculous line would be respectfully interviewed on PBS news shows or published in *The Washington Post.*

But if you're talking about Russia, a different standard applies. It's conventional wisdom that fidelity leads to adultery.

From experts both inside and outside Russia, we hear that the country's economy is falling apart because of unregulated free markets and too much reform. Leftists are ecstatic. Ever since the collapse of the Soviet Union they've been looking for a club with which to beat back the idea that markets lead to progress and prosperity. What could be better than economic turmoil in Russia? It's even the same country that made socialism look so bad.

Economics columnist Robert Kuttner puts it most rhetorically, calling the "Russian implosion" a casualty "of the great illusion of our era—the utopian worship of free markets...an almost lunatic credulity in pure markets and a messianic urge to spread them worldwide....With serious aid, we could have helped true reformers build an effective democratic state and a modern mixed economy. Instead, the Russians got laissez-faire gangster capitalism." Markets equal the mafia.

NYU professor Stephen Cohen, a former Sovietologist and Gorbachev devotee, is more measured, as befits a man whose talking head appears regularly on PBS. But, like Kuttner, he blames Russia's troubles on an "American crusade to transform Russia into a replica of American democratic capitalism," a model he doesn't like much anyway. He says, "We have to drop this dogma about the notion that there's only one way to reform the country. Russia's changing course....The state is coming back to try to save the nation." In this morality tale, the Russian state apparently withered away in 1991, taking with it all business regulations and social spending; it is only now reviving.

Now that Russia is done with its foolish experiment in free market capitalism, goes this line of argument, the country's economic policies can be pragmatic and humane. "Now there is hope for a more realistic policy," former Gorbachev economics adviser Oleg Bogomolov told *The New York Times* after the ascension of Prime Minister Yevgeny Primakov brought communists back into economic-policy positions. "Now it is not just one side that can express their ideas, like our liberal radical economists. We are all in favor of reforms, but not reforms for their own sake, but reforms which serve people."

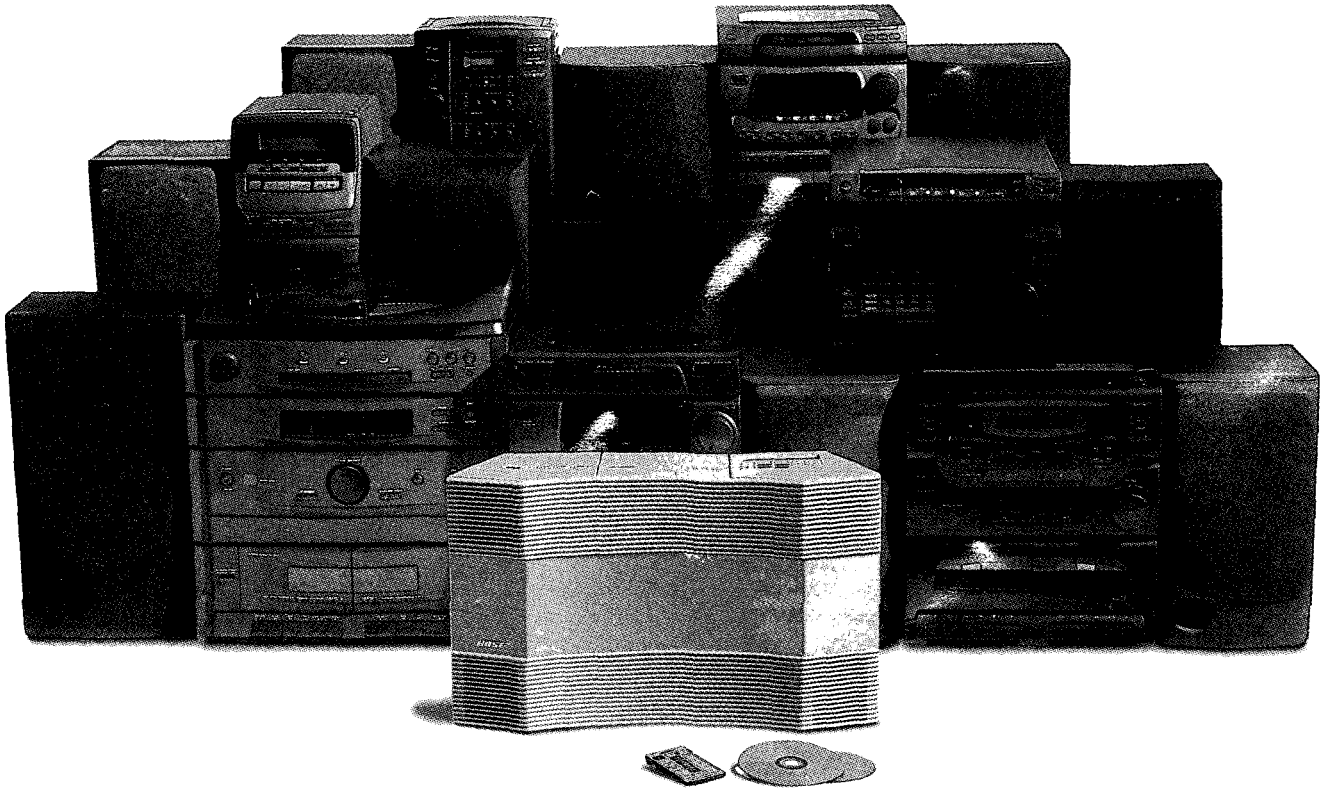
From these accounts, and less tendentious ones as well, you might well think that Russia has been following some sort of laissez-faire model for the past seven years: that Moscow had become the new Hong Kong. Like Bill Clinton's ventures in fidelity, however, Russia's experiment with "free markets" combined a small change in behavior with a lot of good-sounding talk. In truth, Russia no more adopted a market economy—even in a mixed, social-democratic, European way—than Clinton stayed faithful to his wife.

What Russia is actually experiencing is the second collapse of socialist planning. It is true that under international pressure Russia adopted "shock therapy" policies: freeing prices, privatizing some industry, and curtailing inflation. Those policies are what Cohen terms "nitwit, monetarist reforms," equating them with free markets.

But prices, sound money, and a modicum of private property do not a market economy make. They are necessary but not sufficient. The competition and feedback that distinguish real markets are missing in Russia. As economist Hernando de Soto observed of his native Peru, what shapes this economy is "bad law" and the absence of good law. Russia has loads of regulations to curtail enterprise, yet the government exercises pathetically little power to enforce contracts or punish crime. Economist Daniel Kaufmann finds that senior managers or business owners in Russia must devote 30 percent to 40 percent of their time to meeting with public officials, com-

WANNA KNOW WHAT'S REALLY SCARY?... I'LL TELL YOU WHAT'S REALLY SCARY... WE'RE LOUSY AT COMMUNISM, TOO.
RUSSIAN MARKET MELT DOWN
DIRT
STICKS
ROCKS
RUBLES

CHIP BOK



If you think it looks different, wait until you hear it.

The Bose® Acoustic Wave® music system. A sound difference.

Touch a single button on this acclaimed, all-in-one music system—a system no bigger than a briefcase. You'll hear "big, bold sound" that places it "at the forefront of compact music systems," according to the *Chicago Tribune*.

In fact, the sound is so rich and lifelike that people even compare it to much larger, more expensive component systems. No matter what kind of music you enjoy, the Acoustic Wave® music system brings it alive the way it was *meant* to be heard.

All of which is quite remarkable when you consider this simple, one-piece stereo system measures just 10.5″H × 18″W × 6.5″D. It fits just about anywhere, whether at home or in the office.

Different inside, too.

The key to this sound is our patented acoustic waveguide speaker technology inside. No other stereo of any size has it. Just as a flute strengthens a breath of air to fill an entire concert hall, the waveguide produces room-filling sound from a small enclosure. It's a revolutionary concept that won its team of Bose engineers the prestigious "Inventor of the Year" award in the USA.

Folded inside, our patented seven-foot acoustic waveguide enriches sound.

Easy-to-use features.

The system is technologically advanced, yet remarkably easy to use. The CD player, AM/FM radio, and three speakers are all built in, so you'll have no wires or external speakers to hook up. Simply plug it in and press "Play." There's even a handy credit card-sized remote.

Satisfaction guaranteed.

The Acoustic Wave® music system is available directly from Bose, the most respected name in sound. Call today, 1-800-897-BOSE, ext. G3634, to learn more about the system and to find out about our 30-day in-home trial and satisfaction guarantee. Order by November 30, 1998, and receive free shipping, a $29 value. And hear just how different a stereo this small can sound.

For FREE shipping, order by November 30, 1998.

To receive your free information kit, call
1-800-897-BOSE, ext. G3634.

For information on all our products:
www.bose.com/g3634

Mr./Mrs./Ms. _____
Name (Please Print) _____
Address _____
City State Zip _____
( ) ( )
Daytime Telephone Evening Telephone

Or mail to: Bose® Corporation, Dept. CDD-G3634, The Mountain, Framingham, MA 01701-9168.

BOSE®
Better sound through research.

©1998 Bose Corporation. Covered by patent rights issued and/or pending. Free shipping offer is not to be combined with any other offers or applied to previous purchases. Quote: Rich Warren, *Chicago Tribune*, 9/96.

REASON
www.reason.com

President and Publisher Robert W. Poole Jr. *(bobp@reason.com)*

Editor Virginia Postrel *(vpostrel@reason.com)*

Senior Editors
Charles Paul Freund *(cpf@reason.com)*
Nick Gillespie *(gillespie@reason.com)*
Jacob Sullum *(jsullum@reason.com)*

Managing Editor Rick Henderson *(rhenderson@reason.com)*

Washington Editor Michael W. Lynch *(mlynch@reasondc.org)*

Editorial Assistants Robert Honrado, Mary Toledo

Interns Jason Brooks, Abe Crystal

Art Director Barb Burch *(bburch@reason.com)*

Webmaster Brian J. Taylor *(webmaster@reason.com)*

Reason Express Writer Jeff A. Taylor *(jtaylor@reason.com)*

Contributing Editors
Ronald Bailey, Gregory Benford, James V. DeLong, Edith Efron, Glenn Garvin, Steven Hayward, Thomas W. Hazlett, David R. Henderson, John Hood, Brink Lindsey, Carolyn Lochhead, Loren E. Lomasky, John McClaughry, Deirdre N. McCloskey, Michael McMenamin, John J. Miller, Charles Oliver, Walter Olson, John J. Pitney Jr., Thomas Szasz, Frederick Turner, Martin Morse Wooster, Cathy Young

Cartoonists
Chip Bok, Henry Payne, Scott Stantis

Public Affairs Director Mike Alissi *(malissi@reason.com)*

Circulation Director Alyssa Garey *(agarey@reason.com)*

Assistant Publisher Michael Orendy *(michaelo@reason.com)*

Volunteer Anthony Brown

Legal Adviser Don Erik Franzen

Editorial and Production Offices
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064
310-391-2245 Fax: 310-391-4395
(letters@reason.com)
(permissions@reason.com)

Washington Office
1717 Pennsylvania Ave., NW, Suite 260
Washington, DC 20006
202-955-1324 Fax: 202-955-3187

Advertising Sales
The Townsend Group, Inc.
7514 Wisconsin Ave., #350
Bethesda, MD 20814
301-215-6710 Fax: 301-215-7704
(ads@reason.com)

Circulation Service
P.O. Box 526
Mt. Morris, IL 61054
1-888-REASON-8 (1-888-732-7668)
(subscribe@reason.com)

Reason is published by the Reason Foundation, a 501(c)(3) nonprofit educational foundation. Contributions to the Reason Foundation are tax-deductible. Signed articles in *Reason* reflect the views of the authors and do not necessarily represent those of the editors, the Reason Foundation, or its trustees; articles should not be construed as attempts to aid or hinder the passage of any bill before any legislative body. The claims and opinions set forth in paid advertisements published in this magazine are not necessarily those of the Reason Foundation, and the publisher takes no responsibility for any such claim or opinion.

Audit Bureau of Circulations Member

Reason Foundation
Trustees
Harry E. Teasley Jr. (Chairman), Thomas E. Beach, William A. Dunn, James K. Glassman, C. Boyden Gray, Neal I. Goldman, Stina Hans, Manuel S. Klausner, David H. Koch, James Lintott, Robert W. Poole Jr., Al St. Clair, Joel Stern, Walter E. Williams, Frank Bond (emeritus)

President Robert W. Poole Jr.
Vice President, Magazine Virginia Postrel
Vice President, Research Lynn Scarlett

pared to 5 percent to 10 percent in Chile or El Salvador. Bribes cost $30,000 a year for a small enterprise in Russia, and those bribes don't even reduce the time lost to meetings with officials.

Similarly, in a 1995 survey of small shop owners in Moscow and Warsaw, 76 percent of the Russians said they needed a "roof"—a private substitute for state law enforcement, providing physical protection and "dispute resolution"—to operate, compared to only 6 percent of the Poles. In Moscow, 39 percent said they'd been contacted by the criminal racket in the past six months, while only 8 percent of the Poles had. Yet the Russian officials who can't be bothered with fighting crime have plenty of time to stifle enterprise: It takes 2.71 months to register a business in Moscow vs. 0.72 months in Warsaw; Moscow shops were inspected 18.6 times in the previous year, compared to nine times in Warsaw; and 83 percent were fined vs. 46 percent in Warsaw.

Economist Andrei Schleifer, who conducted the survey with a colleague, notes that the results accord with private conversations. Russian entrepreneurs "always point to multiple permits, inspections, registrations, all requiring interactions with multiple officials many of whom need to be bribed before the necessary documents are issued....To compare this to the situation in Poland, in February 1996 I asked a wealthy Polish businessman how difficult it is to open a shop in Poland. He answered immediately: 'Oh, it is very, very difficult. There are now so many shops and so much competition that it is impossible to make money.' But, I insisted, remembering my Russian conversation, 'What about permits, registrations, inspections, bribes, and other obstacles from the government?' 'These are not a problem,' answered the businessman, 'but the competition is awful; I would never recommend opening a shop in Poland.'"

From the grassroots, in other words, Russia's economy doesn't look much like a dynamic, capitalist system driven by competition and consumer choice. In a real market system, competitors—not bribe-demanding bureaucrats—drive entrepreneurs crazy.

Small shops may have to fight bureaucrats and crime lords, but at least they produce value for customers. The heavy industry that still makes up a huge proportion of the Russian economy, and employs many Russian workers, does not. It survives because Russia's economy is still run on socialist lines, with investment decisions made to serve centralized political power rather than decentralized economic competition.

Back in 1990, during the *glasnost* era, Soviet economist Victor Belkin told Americans that the Soviet gross national product was at best 28 percent of U.S. GNP, about half the Central Intelligence Agency's estimate. Once you factored in waste and extremely low-quality goods, he said, the Soviet standard of living was about that of China, much lower than U.S. analysts had believed. Although this estimate and others like it made a splash at the time, American commentators never really internalized the idea that Russians were as poor as Chinese, or that GNP estimates were way off. In a sense, neither did the Russians themselves.

Like the old Soviet economy, the new Russian one pretends to be larger and stronger than it is. On paper, everything looks worth much more than its real value. In Russia's old mining and manufacturing sectors, prices are arbitrary, indicating nothing about the market value of the product or labor. These "prices" work only because bills are paid in barter or not at all.

Resources do not move from wealth-destroying enterprises into wealth-creating ones. Failing businesses do not disappear; they merely suck resources out of the rest of the economy. Economists Clifford Gaddy and Barry Ickes note that "there were more corporate bankruptcies in the U.S. in the past four weeks than the entire last year in Russia." They have coined the term "virtual economy" to describe what has replaced Soviet socialism.

The virtual economy props up old industrial plants whose products are worth less than the labor and resources that go into making them. Through taxes and IOUs, it continually transfers wealth from the few enterprises that produce value into value-destroying businesses and government payments, such as pensions. Many of the transfers are merely promises of future payments—hence, the miners and railroad workers who strike for back wages and the unpaid pensioners and soldiers

who threaten political unrest—but everyone pretends they are based on something real. This process makes Russia poorer and poorer, and its economic problems harder and harder to address. Western aid only worsens the situation, by allowing the pretense to continue.

It may be, as Gaddy and Ickes pessimistically suggest, that the virtual economy is thoroughly entrenched, that the Russian political system won't tolerate the disruptions of letting value-destroying businesses fail. Even many "young reformers" have political connections to these enterprises and to Russia's "Rust Belt," underscoring the case for pessimism. Pretend capitalism may be the rule in Russia for a long time to come, further impoverishing the nation.

It is, however, just pretend. Russia is not the Soviet Union, but neither is it an example of how markets work. To suggest that it is may sound good on TV, but it's just as ridiculous as upholding Bill Clinton as a paragon of fidelity. ◆

Evasive Action

The parsings of Clinton's legal team don't add up.

By Jacob Sullum

In an appropriate if unintended gesture, my cat threw up on my copy of Bill Clinton's response to the Starr report. After reading the anticipatory rebuttal and the supplement released the next day, I'm feeling a little queasy myself.

Clinton attorney David Kendall and White House Counsel Charles Ruff complain that Kenneth Starr loaded his report with "lurid and salacious" details about the president's relationship with Monica Lewinsky. But surely it does not reflect well on the president that a straightforward description of his interactions with an underling in the workplace is considered too indecent for public consumption.

Kendall and Ruff show that the evidence for some of Starr's charges is inconclusive. It's not clear that Clinton "orchestrated or approved" the attempt to conceal some of his gifts to Lewinsky. And though his efforts to help her get a new job can be seen as a way of ensuring her silence, they could also have been motivated by guilt or affection.

The conversations in which Clinton encouraged White House secretary Betty Currie to affirm false statements about his relationship with Lewinsky are harder to explain away. Currie testified that on two occasions Clinton led her through an official version of events, saying things like:

"You were always there when she was there, right?"

"We were never really alone."

"Monica came on to me, and I never touched her, right?"

"You can see and hear everything, right?"

It's difficult to imagine an explanation for these conversations that is both innocent and plausible, and Kendall and Ruff do not offer one. Still, they say, the president cannot be guilty of witness tampering, since Currie was not listed as a witness in the Paula Jones sexual harassment suit, and at the time Clinton was not aware that Starr was looking into his relationship with Lewinsky.

But as the Starr report notes, it was reasonable to expect that Currie might be questioned in the Jones case, since her name had come up repeatedly. It was also reasonable to expect that the Lewinsky matter might become the focus of an official inquiry. In any event, Currie testified that the second conversation occurred on January 21, after the president knew about Starr's investigation.

The most nauseating part of Kendall and Ruff's rebuttal is the wild spinning and mad somersaults aimed at showing that Clinton did not really commit perjury in his civil deposition or his grand jury testimony. Predictably, they claim the scandal is just about sex. But according to the president, it's not even about that.

In Clinton's view, say Kendall and Ruff, what he did with Lewinsky did not amount to "sexual relations," "an extramarital sexual affair," or "a sexual relationship." Hence he could truthfully deny that he had any of those with her.

Yet the first page of the rebuttal announces, "The President has admitted he had an improper sexual relationship with Ms. Lewinsky." Since even Clinton's lawyers can't avoid using the term *sexual relationship* the way everyone else does, their claim that he merely gave "narrow answers to ambiguous questions" is audacious.

Even if we concede that the exact details of the president's encounters with Lewinsky are crucial, Clinton's portrait of her as a fluff girl—giving, but never receiving, sexual stimulation—is at odds not only with her testimony but with her contemporaneous reports to several other witnesses. Clinton also lied about things that do not hinge on an idiosyncratic definition of sex, including his memories of her visits and of the gifts they exchanged.

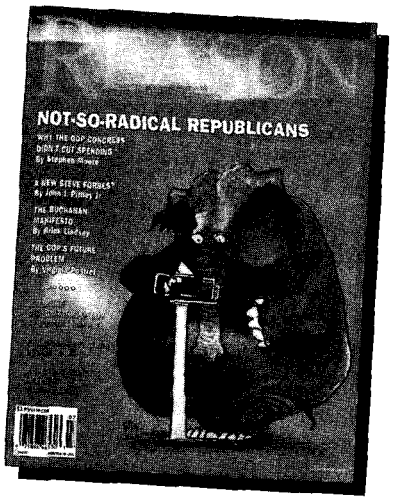
Perhaps sensing that the public does not buy the defense of Clinton's statements as "legally accurate," Ruff argued on *Meet the Press* that perjury is not an impeachable offense anyway: "Whatever the president did or whatever the president said, whether it was in January or in August, there simply is no basis for removing the president from office."

Congress may disagree. In a recent Cato Institute paper, legal writer Jason Vicente notes that most constitutional scholars take the position that "indictable offenses fall within the class of impeachable offenses. There is a fundamental inconsistency, they argue, between a president's oath to faithfully execute the law and his having himself committed offenses indictable under that law."

I have to say I find that position compelling, even though it raises a prospect that is hard for me to view with equanimity: President Gore.

Now I really feel sick. ◆

If you enjoy Jacob Sullum's newspaper columns (this is one from September 16; others are available at www.reason.com), ask your local opinion page editor to contact Creators Syndicate.



Forbes on Drugs

During the dismal 1996 presidential campaign, Steve Forbes was the only "serious" candidate who looked even remotely appealing to me. In fact, I was highly frustrated when he dropped out of the race.

Perhaps, as John J. Pitney Jr. suggests ("Capitalist Tool Time," July), Forbes will again be the most tolerable candidate in 2000. But his vocal advocacy of the war on drugs (which I wasn't aware of in 1996) will be a bitter pill for me to swallow, even though, as Pitney notes, most likely every other major-party candidate will endorse drug war dogmas.

I'd like to be able to ask Forbes a couple of questions to see if his position on the drug war is one I can live with: Given that the resources of the criminal justice system are limited, if he wishes to maintain drug prohibition, which does he consider a higher priority: consensual drug offenses, or violent and predatory crime? Which is more important to Forbes, fighting drugs or defending the Constitution? Would he favor eliminating all "drug exceptions" to the Bill of Rights and requiring the police to respect citizens' rights, even if that means fewer drug arrests and convictions? Would he make a serious effort to halt civil-liberties horrors, such as no-knock drug raids on the homes of people who turn out to be innocent and asset forfeiture, which allows law enforcement officials to seize property without trial? Or does he share the all-too-common view that this is a "war on drugs" and it's OK for civil liberties to be shoved aside during "wartime"?

Forbes's answers to these questions could determine whether I vote for him (if I get the chance this time) or once again "waste my vote" on the Libertarian Party candidate.

Bill Henley
wrhbill@aol.com

Mr. Pitney states that while Steve Forbes is not the perfect candidate, who else is there? Libertarians will never get a good candidate if they settle for someone with Steve Forbes's qualities. The war against drugs has fueled domestic budget growth as well being one of the chief reasons that the Bill of Rights is shrinking and we are losing our privacy. Unless we choke off the drug war, we have nothing to look forward to other than growth in the prison-industrial complex and the loss of our precious freedom.

Henry Schwan
Seagoville, TX

Threats and Intimidation

Jacob Sullum appears to have fallen head over heels for the lies of the pro-life movement ("Mouths Sued Shut," July). The real facts are:

1) No one has ever gone on record as opposing pro-lifers' right to free speech, except when that speech becomes either a threat of force or screaming-in-your-face harassment. Do you really believe that it's anti-liberty to restrict *those*?

2) Perhaps blocking doorways to abortion clinics should be labeled *coercion* rather than *extortion*. It's still a use of force, and should be banned, and the ban should be enforced.

3) The pro-life movement, and the leaders of Operation Rescue in particular (including its jailed founder) have been on record many times with the message: "Our ideal is a country where abortion may be legal, but no one can obtain one." If that isn't proof that they use force in order to intimidate abortion providers and customers out of their legal rights to do business, what is?

John David Galt
jdg@tomatoweb.com

Jacob Sullum replies: As I noted, the use of force or threats to disrupt abortion clinics is already illegal under state and federal law. RICO lawsuits are not needed to punish crimes such as trespassing and assault; they are needed to cast a wider net, punishing provocative speech that can be said to encourage such crimes. And although the plaintiffs are ostensibly seeking compensation, the real aim is not obtaining damages but encouraging self-censorship.

Abusing Guns

Max Schulz's "Smoking Guns" (July) detailing Philadelphia Mayor Ed Rendell's threatened lawsuit against the firearm industry missed the mark on a number of key observations about our industry and the American Shooting Sports Council.

While the mayor's political posturing definitely prompted our initial meeting (lawsuits after all are terribly expensive even if you hold the winning hand), our subsequent discussions resulted from the industry's sincere and legitimate concerns over the criminal abuse of our products.

Communicate with REASON

We appreciate your letters, typed double-space and limited to 250 words. Letters sent to REASON will be considered for publication (unless otherwise noted) and may be subject to abridgment or editorial comment. Any letter intended for publication must include the sender's name, address, and daytime telephone number. Letters may be sent to letters@reason.com or mailed to:

3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064

This willingness to open a dialogue is hardly evidence of our attempting to "buy off" anyone. Nor have we "acquiesced" to any of Rendell's draconian demands, as Schulz claims. To the contrary, I emphatically told reporters immediately following Rendell's speech at our Washington conference that the industry would oppose such proposals as one gun purchase per month, or anything like a gun ban.

As I informed the mayor, along with representatives of the U. S. Conference of Mayors, the National League of Cities, and the National Association of Counties at our most recent meeting (June 8), we must all begin thinking beyond the "box" that has thus far limited the debate over criminal violence and firearms if we are to advance towards cooperative solutions.

That is what this colloquy is all about. To wit: a reasoned, rational discourse which seeks realistic, workable solutions to a problem that plagues us all.

Richard J. Feldman
Executive Director
American Shooting Sports Council Inc.
Atlanta, GA

Max Schulz replies: I sympathize mightily with the position in which Mayor Rendell has placed the firearms industry, threatening legal action modeled on the tobacco lawsuits if it doesn't give into his demands. It is as if the mayor were shooting at gunmakers' feet and insisting they dance.

The ASSC's tactic of suing for peace might work. Then again it might not. Since the story ran, Chicago Mayor Richard Daley has made it known he is considering a similar lawsuit against gun manufacturers. Other mayors may pile on board. Good luck.

Crop Yields

In "Deadly Crop" (Citings, June), Jacob Sullum cites *Marijuana News*, saying Thomas Jefferson "raised more than 100 acres of hemp, which was used to make sailcloth and rigging." So far so good. But then he says, "With a typical yield of 150 plants per square yard, multiplied by 4,840 square yards per acre, that's more than 70 million plants per year."

One hundred fifty plants per square yard allows 8.64 square inches per plant, a space less than three inches square, which would produce small, weak, spindly hemp. And simply multiplying the square yards per acre by 100 acres doesn't allow for roads and paths through the acreage, which are essential for planting, weeding, and harvest.

As a convicted cannabis grower, I would consider 10 plants per square yard a much more realistic figure. But even at that, Jefferson would have been growing close to 5 million plants, enough for him to be executed under the 1995 Omnibus Crime Control Act 80 times over.

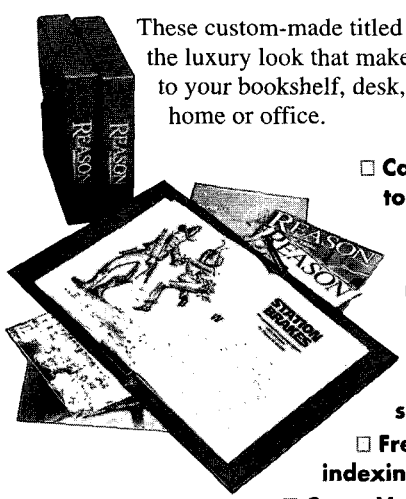
Rycke Brown
Southern Arizona
Correctional Release Center
Tucson, AZ

Jacob Sullum replies: While I defer to Mr. Brown's expertise, the estimate of 150 plants per square yard is from *Marijuana News*.

ORGANIZE AND PROTECT YOUR COPIES OF

REASON

Now there's an easy way to organize and keep copies of REASON readily available for future reference.



These custom-made titled cases and binders provide the luxury look that makes them attractive additions to your bookshelf, desk, or any location in your home or office.

- ☐ **Cases and binders designed to hold a year's issues (issue sizes will vary).**
- ☐ **Constructed of heavy reinforced board, covered with durable leather-like material in red.**
- ☐ ***Title hot-stamped in silver.***
- ☐ **Free personalization foil for indexing year.**
- ☐ **Cases V-notched for easy access.**
- ☐ **Binders have special spring mechanism which allows magazines to be fully opened for easy readability.**

REASON
Jesse Jones Industries
Dept. 95RSN
499 East Erie Avenue
Philadelphia, PA 19134

Quantity	Cases	Binders
One	$ 8.95	$11.25
Three	24.95	31.85
Six	45.95	60.75

Add $1.50 per case/binder postage and handling. Outside USA $3.50 per case/binder (U.S. funds only). PA residents add 7% sales tax.

Please send ____ cases; ____ binders for REASON Magazine.

Enclosed is $ _____

☐ Charge my: (minimum $15)
☐ American Express ☐ Visa
☐ MasterCard ☐ Diners Club

Card # _____

Exp. Date _____

Signature _____

Charge Orders: Call Toll Free 7 days, 24 hours 1-800-825-6690

Name _____
Please Print

Address _____
No P.O. Box Numbers Please

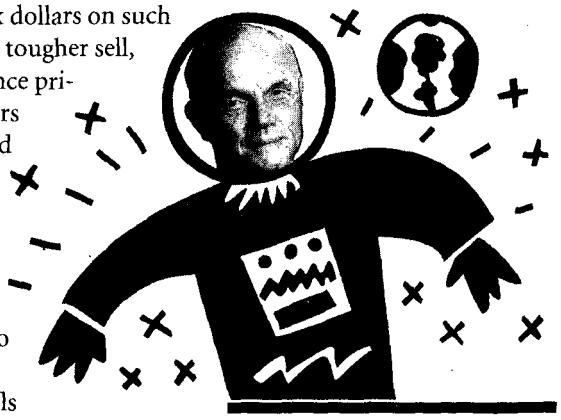
City _____

State/Zip _____
Allow 4-6 weeks for delivery.

The Right Fluff

By Nick Gillespie

During the Cold War, government-financed space missions didn't require much salesmanship: National security "demanded" that we get there and do that before the Russkies turned the moon into a literal satellite republic. These days, though, spending tax dollars on such ventures is a tougher sell, especially since private operators are ready and willing to step up to the launching pad. Gimmicks are needed to keep NASA's funding levels healthy (remember the strategically timed "discovery" of possible Martian life forms?).



Enter John Glenn, the very senior U.S. senator from Ohio who, back in 1962 as a Mercury astronaut, became the first man to orbit the planet. This October, at the age of 77, he is scheduled to become the world's oldest spaceman, playing the official—and telling—role of "payload specialist" on shuttle mission STS-95.

But such hucksterism has so far failed to ignite the great boob public's enthusiasm. It has inspired instead mostly comic and cynical reactions, including a Letterman-inspired Top 10 list of changes in NASA policy ("Tang will be replaced with Metamucil... dishes of candy will be spread around the shuttle cabin...") and often harsh treatment by the press. Even in Glenn's home state, a *Cincinnati Enquirer* editorial wondered whether his ticket to ride was a "presidential payoff for partisan service in helping to bury the Senate investigation into Clinton-Gore campaign finance violations," then suggested it was time for the millionaire pol to finally settle a very Earth-based matter: the $3 million debt left over from his 1984 run at the presidency. Such attitudes may prove harder to escape than gravity's pull.

Balance Sheet

By Rick Henderson

ASSETS

▲ **Special Delivery.** Telling a conference of business customers the Postal Service "needs to be deregulated, commercialized," new Postmaster General William L. Henderson concedes the first-class mail monopoly will eventually end. This public reversal may also signal less hostility from the Postal Service toward its customers and competitors.

▲ **Local Authority.** The Salt Lake City Council refuses to convert its local police force into federal immigration cops. A plan drafted by the chief of police, the Immigration and Naturalization Service, Attorney General Janet Reno, and Sen. Orrin Hatch (R-Utah) to "cross-deputize" 20 Salt Lake City cops is voted down 4 to 3.

▲ **Trumping Trump.** Donald Trump and the Atlantic City Casino Reinvestment Development Authority end their attempt to seize boardinghouse owner Vera Coking's property. (See "Trump Change," Citings, May 1997.) The CRDA tried to take Coking's home so that Trump Plaza could build a parking lot for its limos. But after a local court rules this use of eminent domain unconstitutional, the agency abandons its effort.

▲ **Blue Moon.** Pandering to the "family values" crowd, Norway's ruling Christian People's Party implements Sunday blue laws. Large retailers must shut their doors. But gas stations are exempt, letting crafty merchants fight back. RIMI and REMA, the nation's two largest supermarket chains, say they'll install gas pumps at several hundred outlets.

Toasting Tobacco

By Jason Brooks

"It's time to get the country looking at the alcohol industry in exactly the same way we're looking at tobacco," says Sandy Golden, president of the Tampa, Florida–based Campaign for Alcohol-Free Kids. "We're 10 to 15 years behind the tobacco people, and we want to close that gap in the next year or two."

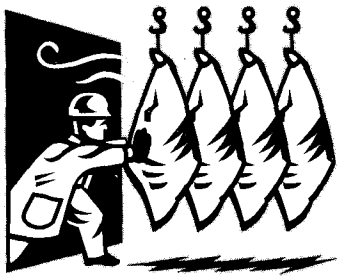
Golden, who was the first executive director of Mothers Against Drunk Driving, says, "The alcohol industry is far worse than the tobacco industry, if you look at the number of years of life lost." Golden's group plans a multifront war on booze:

■ In hopes of encouraging states to sue alcohol companies, Golden is "teaching" groups such as the Women's Christian Temperance Movement to write letters to state attorneys general. "The goal of the letters is to determine whether it is possible to sue big alcohol the same way as big tobacco," he says. "If one attorney general launches a lawsuit, there will be a domino effect. They will all do it."

■ Golden is pushing for a presidential commission to "address the issue of underage drinking." He says a commission to study and propose new regulations on alcohol advertising is "just a matter of time."

■ Golden has filed a formal petition with the Federal

▼ **Stun Gun.** Mr. Smith, Mr. Wesson, meet Mr. Nader. The latest gun control scheme would apply federal health and safety regulations to firearms. Writes Violence Policy Center analyst Susan Glick in the *Los Angeles Times*, "If handguns were held to the same standards as every other consumer product in America, they would likely be banned."



▼ **Cattle Prod.** The General Accounting Office says more than one-quarter of the federal government's $1 billion food inspection budget is wasted on a single antiquated process. While safety measures to check for infectious bacteria go unfunded, notes the GAO, federal inspectors squander $271 million a year eyeballing cow and chicken carcasses for visible signs of disease.

▼ **Kangaroo Court.** Did ads for Bill Clinton's 1996 re-election violate campaign laws against "express advocacy"? Certainly not, despite the bleatings of campaign reformers and the Federal Election Commission. Clinton may deserve to lose the White House, but not over this.

▼ **Old News?** Greedy geezers and the redistributionist crowd get an unexpected reprieve: Stock market gyrations and the Clinton scandals all but guarantee that Social Security reforms won't take place before the 2000 election.

LIABILITIES

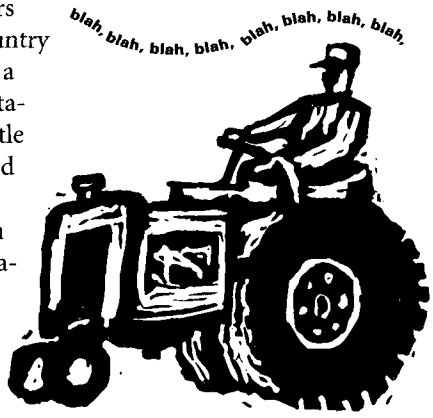
Communications Commission, calling for a rule that would let parents screen out alcohol ads from their television sets with V-chip technology.

Unauthorized Transmission

By Michael W. Lynch

In Tioga, North Dakota, the sole radio station offers both kinds of music: country and western. Roy Neset, a local farmer, asked the station many times for a little variety but never received satisfaction. So Neset made an agreement with a Colorado talk-radio station and retransmitted its signal from his home satellite dish over the five-mile radius where he does his tilling.

The local radio station doesn't like the competition. Its manager complained to the Federal Communications Commission's field office, which in turn convinced the obviously underworked U.S. attorney in North Dakota to sue Neset for the crime of broadcasting from home to tractor without a license.



So why doesn't Neset just get a license? The FCC won't give him one for his 30-watt transmitter, even though the entire FM spectrum over his farm lies fallow. Since the Carter administration, the agency hasn't issued any broadcast licenses for transmitters of less than 100 watts.

Neset is not the only victim of this policy. The Institute for Justice, which has mounted a First Amendment defense of Neset, reports that over the past year the FCC has initiated actions against approximately 100 microbroadcasters, from groups offering original programming such as Free Radio Berkeley to retransmitters like Roy Neset.

Ageless Hostilities

By Jason Brooks

A July rally in Washington intended to rejuvenate supporters of Social Security got nasty when a group of seniors encountered a cohort of libertarian-leaning youth. The National Council for Senior Citizens, an advocacy group that opposes any changes in Social Security, held a rally at the Capitol to "bridge the generations" on the issue of old-age entitlements. Seniors carried signs bearing such messages as, "Don't pit the young against the old."

But many of the 2,000-strong protesters—who consisted primarily of retired union workers—seemed to be more interested in preserving the welfare state than in intergenerational harmony. When one young person asked what will happen when the Social Security trust fund runs out in 2029, a senior remarked with a shrug and a smile, "I won't be here." ▶

QUOTES

"If the marketplace had its druthers, you'd have slavery and children doing labor."
—Sen. Carol Moseley-Braun (D-Ill.), addressing the National Association of Black Journalists, July 31

"There are a lot of sight gags in our house."
—Tipper Gore, in the July *Good Housekeeping*

"[Gambling] raises an almost metaphysical challenge to our belief in an ordered cosmos, governed either by providence or a fundamental rationality....In our post-modern times, too many of us tend to think that the cosmos is a kind of chaos—that we have been thrown into the world for no higher reason than to pursue our own pleasure-fantasies."
—Adam Wolfson, executive editor of *The Public Interest*, in the August 14 *Wall Street Journal*

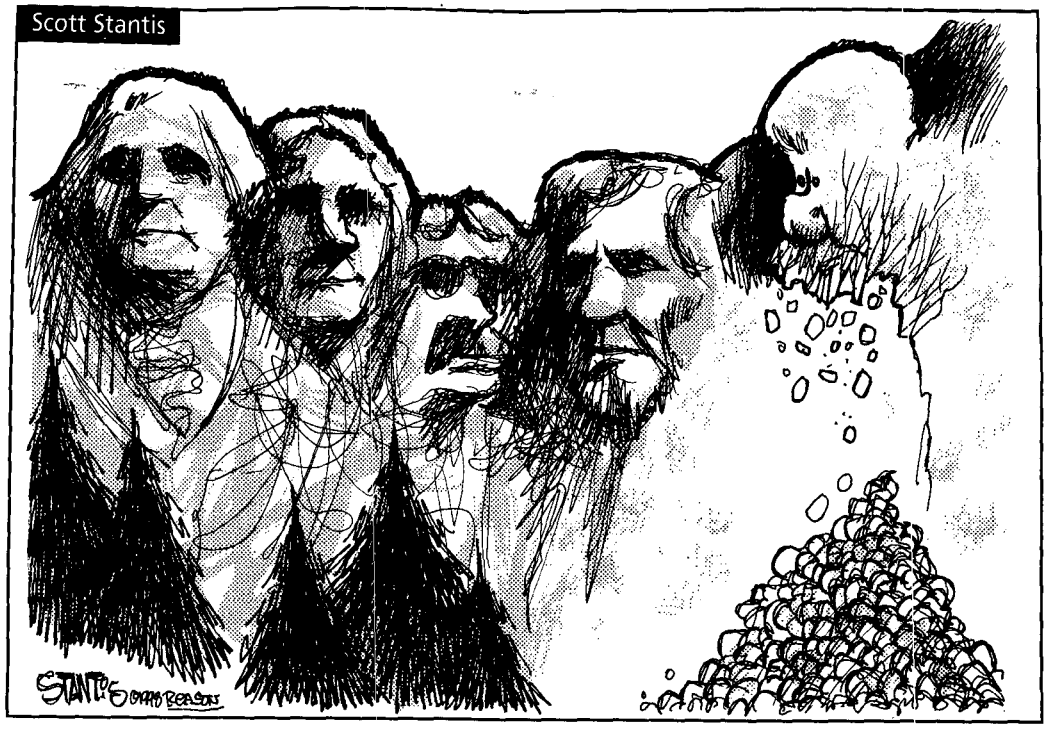
BRICKBATS

♦ David Virts, a long-distance trucker, is suing his employer because he doesn't approve of some of the partners who have been assigned to him. They're women. Virts tried to refuse an overnight driving assignment because he thinks such trips "can lead to lustful thoughts and sexual temptations, all of which the Bible says Christians should avoid." The trucking company says its contract with the Teamsters mandates handing out assignments based on seniority, so it couldn't let Virts choose his partners. At first, he was let go by the company for refusing to take the trip. He was soon rehired, but he's suing anyway, saying the experience caused him emotional distress.

♦ In Colorado, a House committee killed without comment a bill that would have outlawed the practice of female genital mutilation. This marks the third straight year such a bill has failed to clear the House.

♦ If you go to New Life Books and Gifts in Lynchburg, Virginia, you might want to look for books about Mormonism, Jehovah's Witnesses, Judaism, Buddhism, or Hinduism. It is, after all, a religious bookstore. Mayor James S. Whitaker, who owns the store, has placed all books on those topics in a section called "prophecy and cults." That doesn't please adherents of those faiths. On the other hand, following complaints, Whitaker has agreed to remove books critical of Catholicism.

Scott Stantis



Peace and Quiet

By Abe Crystal

Sen. Daniel Akaka (D-Hawaii), famed for such groundbreaking legislation as the Pet Protection and Safety Act and the Senate Day Care Center Recycling Funding Support Act, has taken another small step toward micromanaging every aspect of modern existence.

Akaka and Sen. John McCain (R-Ariz.) attached an amendment to the National Air Transportation System Improvement Act of 1998 which requires the formulation of an Air Tour Management Plan (ATMP) for each national park. The ATMP will restrict the ability of helicopter tours to fly over national parks by limiting both flight paths and the number of flights.

"Rather than a one-size-fits-all approach," said Akaka, "our legislation establishes a fair and rational process in which environmental and aviation needs can be addressed in the context of the unique circumstances that exist at individual national parks." The initial results of this new approach may seem modest: limiting helicopter tours of Hawaii's volcanoes and the Grand Canyon. But the amendment is part of the latest green agenda: making national parks off-limits to most tourists.

In an August 25 *Los Angeles Times* column, Earth Day founder Gaylord Nelson writes that "we must quickly move to save our parks from the din of machinery," a goal that includes phasing out automobiles and ending the use

Things turned ugly when a group of about 50 young people, many of them 20-something Washington interns, arrived with signs that read, "Dialogue, not Demagogue." Shouts of "Get a job!" filled the air. "You've never had a job! You've been a professional bum all your life!" yelled one of the seniors at the organizer of the youth protest.

Another man threatened a young female: "We'll deal with you the way we did in the good old days—with a baseball bat," he said, swinging his arms in mock attack. So much for bridging the generations.

ARTIFACT

AMERICAN HONDA MOTOR CO. INC.

On the Road

That's a stick shift pictured left, a piece of car tech with an emotional history more intricate than the gears, clutch, and stick that constitute its physical assemblage. Transformed long ago from necessity to style, it has been living a life of road romanticism. Stick shifts have been an example of how the relationship with a "useless" object can become an important part of an owner's self-image, in this case wrapping identity in speed, control, "feel of the road," and implied auto expertise. It melded man (mostly) and car into a type unknown prior to this century.

But all that is apparently coming to an end. *The Wall Street Journal* reports that the number of cars featuring stick shifts is declining steeply. The paper cites a number of factors, but the most interesting one is also identified as "the last nail in the stick shift's coffin": the cell phone.

Drivers can't easily shift and use the phone simultaneously, pitting the identity values of the two technologies against each other. That the status (and practicality) of mobile communication is now overwhelming the romance of gear shifting is only a small death for "style," which after all thrives on such little deaths. But it certainly changes the idea of being on the road.

—Charles Paul Freund

of jet skis, snowmobiles, and dirt bikes. "These motorized recreational uses," he writes, "simply are not compatible with the National Park Service's mission." Nelson doesn't spell out his view of that mission, but it seems to be incompatible with private vehicles powered by internal combustion engines.

Drug Entrepreneurs

By Jacob Sullum

"Much of what we call 'crime,' is actually work," observes University of Illinois sociologist John M. Hagedorn in a startling new report, *The Business of Drug Dealing in Milwaukee*, from the Wisconsin Policy Research Institute (WPRI).

Hagedorn, who has also performed a five-year study of drug dealing for the National Institute on Drug Abuse, applies the insights of management guru Peter Drucker and Peruvian economist Hernando de Soto to inner-city Milwaukee. He concludes that crack dealing "is in many ways an innovative, entrepreneurial, small business venture," part of an informal economy that gives people with little education or money an opportunity to make a living.

Information from Hagedorn's detailed, anonymous surveys of 28 drug dealers in two Milwaukee neighborhoods indicates that "most drug entrepreneurs are hard working, but not superrich," grossing $1,000 to $5,000 a month. He also finds that "most drug entrepreneurs aren't particularly violent," with two-thirds reporting less than one violent incident a month.

The WPRI is a conservative think tank, while Hagedorn notes his own "long history of left wing activism." In his conclusion, he calls for a dialogue between left and right aimed at reducing the harmful consequences of the war on drugs. "Our drug policy is held captive to politics rather than rationality," he writes, suggesting "more toleration —a 'look the other way policy'—for most non-violent, productive, informal economic activity." Hagedorn's report is available at www.wpri.org.

Watch Your Backpack

By Jason Brooks

If you've ever thought about fleeing into the wilderness to avoid the long reach of the tax man, you might want to buy your hiking gear soon.

A coalition of environmental groups is trying to get Congress to pass a 5 percent tax on outdoor recreation products—everything from sport-utility vehicles to backpacks. The money would be used for such purposes as protecting endangered species and building wildlife trails. The groups pushing the proposal—some 2,900 of them, including environmental organizations, state fish and wildlife agencies, and municipalities—are organized under an umbrella called "Teaming with Wildlife."

"Outdoor tax" proponents call their levy a user fee. But a quick look at the items that would be covered suggests a rather tenuous relationship between the user and his impact on the wilderness. For ▶

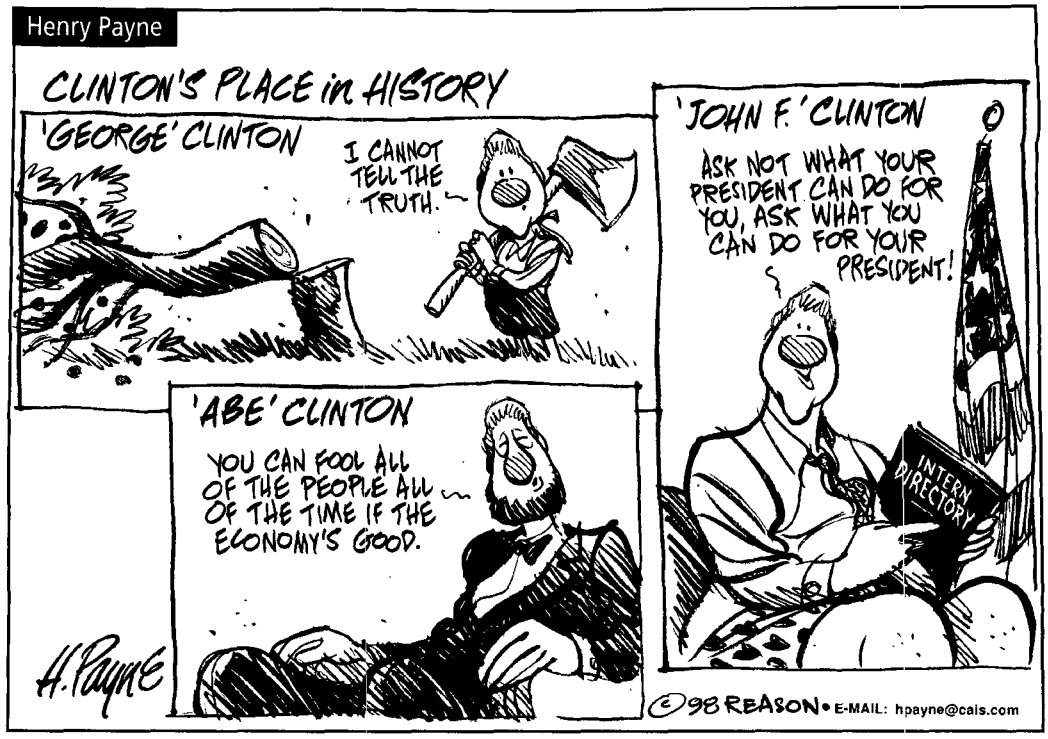
BRICKBATS

◆ Police in Miami arrested 10-year-old Andrew Perkins, handcuffed him, and put him in jail. His crime? He got into a spat with his parents at a restaurant and kicked his mother. A waitress saw this and called the police. When they got there, they made Andrew spend the night in jail. Even the judge handling the case says it makes no sense. But the police say state law on domestic violence mandates an arrest. If they hadn't arrested the boy, they would have been subject to legal action.

◆ In Bozeman, Montana, Cody Johnston is suing a local newspaper and the court system for libel. Johnston's troubles began when he got a traffic ticket for a commercial trucking weight violation. A computer glitch or clerical error turned that citation into a conviction for deviate sexual conduct, a broad charge that covers homosexual acts and bestiality. He learned of this when his parents, who read about the conviction in the paper, confronted him. He told them he had no idea what they were talking about, but they, his wife, and his sister concluded he was in denial and tried to get him to seek counseling.

◆ Former Vice President Dan Quayle thinks the GOP has a pretty good chance of regaining the White House in 2000. "Let me just be very clear that the Republican Party will select a nominee that can beat Bill Clinton," he said recently. That seems to be a safe bet: Clinton is constitutionally ineligible to run for re-election,

—Charles Oliver


Henry Payne
CLINTON'S PLACE in HISTORY
'GEORGE' CLINTON
I CANNOT TELL THE TRUTH.
'ABE' CLINTON
YOU CAN FOOL ALL OF THE PEOPLE ALL OF THE TIME IF THE ECONOMY'S GOOD.
'JOHN F.' CLINTON
ASK NOT WHAT YOUR PRESIDENT CAN DO FOR YOU, ASK WHAT YOU CAN DO FOR YOUR PRESIDENT!
INTERN DIRECTORY
H. Payne
©98 REASON • E-MAIL: hpayne@cais.com

example, only 10 percent of sport-utility vehicles ever drive off-road. And more than two-thirds of the backpacks sold are used by students to lug books to and from school. Other items that could be covered by the outdoor tax are hiking boots, tents, even cameras and film.

For now, the proposal doesn't have congressional support or a legislative sponsor. "The problem is, we have a very conservative Congress right now," says Naomi Edelson, one of the group's organizers. Still, Edelson says, the tax idea, which has been pushed for the last five years, "isn't dead." Teaming with Wildlife is biding its time, lobbying members of Congress, and hoping for a "different mood" to emerge on Capitol Hill.

Voting on Preferences

By Michael W. Lynch

The campaign to end racial preferences has moved to Washington state, where voters in November will pull the lever on an initiative that would abolish the government's system of race- and gender-based preferences.

The Washington Civil Rights Initiative (I-200) wended its way to Washington via California, where the similarly worded Proposition 209 passed in 1996, and Houston, where voters rejected an anti-preference initiative by a margin of 54 percent to 46 percent last November.

Few California exports are popular in the Evergreen State, but polls indicate that Washingtonians agree with Californians that the government should not play favorites based on race. A July *Seattle Times* poll found that when Washington voters are read the language they will confront on election day—"The state shall not discriminate against—or grant preferential treatment to—any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education or public contracting"—64 percent give the initiative thumbs up. But when voters are told the initiative would wipe out "affirmative action"—a claim disputed by I-200 backers—support for the initiative drops to 49 percent.

Pre-election polling on California's Prop. 209 uncovered similar semantically inspired shifts. The deceptive wording of the Houston ballot, which said the initiative would end "affirmative action" rather than "preferences," is believed to have caused its narrow defeat. (In June, a federal judge in Texas found the ballot language misleading and invalidated the election; the initiative may be put before Houston voters again in 1999.)

Not surprisingly, the Washington initiative's foes claim I-200 will doom all affirmative action. For help, they are counting on a sympathetic Seattle press and a popular and supportive gov-

ernor, along with deep-pocketed corporations, labor unions, and national civil rights groups.

For their part, I-200 proponents remain confident. "We will prevail by telling the truth," says I-200 Chairman John Carlson, "because a majority of people believes that governments shouldn't discriminate."

DATA

Pruning Profits

By Nick Gillespie

If a tree falls in a forest, it may or may not make a sound. But this much is certain: If it falls in a forest managed by the federal government, it will generate significantly less revenue than if it falls in one managed by a state government. Between the Forest Service and the Bureau of Land Management, the feds oversee about 20 percent of the nation's land mass, including massive timber resources they sell to private interests. Between 1994 and 1996, however, Forest Service– and BLM–administered land annually lost about $290 million on such ventures. The agencies also rang up annual deficits of $66 million on grazing fees and $355 million on recreational activities.

A new study from PERC, a market-oriented environmental think tank based in Montana, finds that such losses run counter to the experience of state land management agencies. Researcher Holly Lippke Fretwell compared the federal agencies' performance to that of 10 Western state "trusts" that operate similar public lands and sell similar rights to help fund public education. In the period between 1994 and 1996, the states earned an average $5.56 for every dollar spent managing public lands.

Fretwell says the trusts are more efficient because they must pay operating expenses out of their own revenue and because they have specific beneficiaries who, "similar to stockholders...have a claim on 'profits.'" The federal agencies, in contrast, rely on Congress for annual budgets and turn over all revenue to the general treasury. There is virtually "no connection between money spent and money earned," Fretwell notes. The predictable result: red ink.

Land Management: Federal vs. State, 1994–96

	Revenue (in $ millions)	Expense (in $ millions)	Revenue per $ spent
Forest Service	914	3,010	0.30
BLM	1,232	1,308	0.94
State Trusts	65	12	5.56

Note: Rounding affects numbers slightly.
Source: PERC

Addicted to Psychobabble

By Michael W. Lynch

The notoriously jaded members of the mainstream media would surely be skeptical of anyone who earned a living by offering alcoholism counseling in a bar. How, then, can you explain the glowing coverage given "cyberpsychologist" Kimberly Young, who offers to treat the affliction of "online addiction" by charging a buck a minute for sessions over the Internet?

Young, who also moonlights as an assistant professor of psychology at the University of Pittsburgh at Bradford, has created a cottage industry. Identifying "various types of Internet addiction such as cybersex,...cyberporn, on-line relationships, and information overload," she founded the Center for On-Line Addiction (www.netaddiction.com) in 1996.

Neither Young nor her Web site offers a definition of online addiction, except to say that work-related Internet use isn't covered. But she does say those afflicted with the disorder appear to suffer from the same problems that haunt compulsive gamblers, alcoholics, drug abusers, and persons with eating disorders. And while not suggesting how widespread this disorder may be, she cites the explosion of Internet use and sees "a potential epidemic."

Young offers two counseling options—one-on-one by e-mail or group counseling through online chat groups. She also conducts seminars and gives expert testimony and forensic evaluations in both civil and criminal court cases. She bills her book *Caught in the Net* as the "first and only available recovery book on Internet addiction."

Not everyone is a believer. Malcolm Parks, a communications professor at the University of Washington who researches the social implications of the Internet, accuses Young of making "breathless statements" based on skewed surveys.

"I'd argue that this is as much about marketing and business as it is about a social problem," Parks told the *Pittsburgh Post-Gazette.* Nonetheless, Young's breathless statements make for good copy and sound bites. More than 360 news outlets have covered her crusade. She might want to look into a recovery program for academics addicted to media coverage and the money that flows from it. ▶

SOURCES

"By 1994, it was apparent that Japan was girding itself for a new leap forward with the help of powerful Keynesian economic stimulation via increased public spending....While American observers continued to dwell on the illusory gloom of the past few years, the Japanese were focusing on a bright future."
—Former *Forbes* and *Financial Times* editor Eamonn Fingleton in his 1995 book *Blindside: Why Japan Is Still on Track to Overtake the U.S. by the Year 2000.* Read this and dozens of other howlers in a Cato Institute study, **"Revisiting the Revisionists: The Rise and Fall of the Japanese Economic Model,"** by Brink Lindsey and Aaron Lukas **(www.freetrade.org/pubs/pas/tpa-003.html)**.

The Angus Reid Group, a Toronto-based market research firm, has conducted surveys for *The Economist* each of the last two years, attempting to measure **attitudes about the future** in 29 countries. Respondents are asked their predictions on the state of the world in one year, 10 years, and the next generation. Optimism may well be an indicator of future success, as *The Economist* notes, since people who think the future will be better tend to "do the things that will make it better, such as working hard, saving and taking risks."

This year's Hope Index (available at **www.angusreid.com/studies/econpoll.html**) finds five of the eight most optimistic nations are in Asia (Malaysia, South Korea, Thailand, China, and Taiwan). The U.S. finishes in a tie for fourth. But **the least optimistic people are the Japanese**, who are even more bummed about the future than residents of Russia, Germany, and France.

Chip Bok

TV Worth Selling

By Adam Clayton Powell III

Are public television stations quietly being privatized?

Without much attention, several have been and more may be on the way. Many date the privatization of public stations to the 1995 sale of WNYC-TV, a PBS affiliate owned by the city of New York. Dow Jones paid the city more than $200 million for the station and promptly converted it to a business-news format. Today, the station serves as the East Coast flagship of Paxson TV, the seventh national commercial television network, which began broadcasting in August.

A few weeks before the Paxson network's debut, PBS stations in Buffalo and Albany were bought by Sinclair Broadcasting, which already owned 54 commercial television stations, for $56 million. If the federal government approves the sale, Sinclair will convert both stations from public to commercial programming. And yet another transfer, of a PBS station in Pittsburgh, is awaiting federal approval.

One might think PBS is bemoaning the loss of stations in four Eastern markets, but one would be wrong: Public television officials note that even if all of these sales are approved, there will still be one PBS station left in each city. And that is the concept: one PBS station to a city.

PBS says there are still 22 cities which have two or more public television stations, and the network would be quite happy to concentrate its resources on just one station in each market. But those extra PBS stations have become more valuable to commercial owners.

Decades ago, there were just the ABC, CBS, and NBC networks. Most broadcasters believed television could sustain only three or four stations in each city, so they gave away "surplus" stations for a song—or less. Now, with Fox, WB, UPN, Paxson, and, coming soon, Barry Diller's new network, there is a demand for eight commercial network affiliates in each city, so the hunt is on to find new stations.

The U.S. public television system, built over the last 30 years by billions of dollars in taxpayer funds, has discovered it can reap tens, perhaps hundreds, of millions of dollars per city by downsizing. This trend may give the concept of the public television fund-raising drive an entirely new meaning.

Come and celebrate
at the Reason Foundation's 1998 Gala Anniversary Banquet
Thursday, November 12, 1998
The Miramar Sheraton Hotel
Santa Monica, CA

Black Tie Optional

Reception 6:30 PM
Dinner 7:30 PM

Keynote address by ABC 20/20's John Stossel

Master of Ceremonies James Glassman
Washington Post columnist & American Enterprise Institute

Additional remarks by:

Frank Baxter
CEO, Jeffries & Company

Larry Elder
ABC Radio

Alex Kozinski
9th Circuit Court of Appeals

Stephen Goldsmith
Mayor, Indianapolis

David Davenport
President, Pepperdine University

$5,000	*Gold Circle Host Committee* *Host table of eight: VIP reception for eight, priority seating and next-day program for two.*
$3,500	*Silver Circle Host Committee* *Host table of eight: VIP reception for eight and next-day program for two.*
$2,000	*Banquet Host Committee* *Host table of eight: VIP reception for two and next-day program for two.*
$500	*Gold Individual ticket includes VIP reception and next-day program.*
$350	*Silver Individual ticket includes VIP reception and dinner.*
$250	*Individual celebration ticket includes reception and dinner.*

For additional information, please contact Erica Mannard at the Reason Foundation 310-391-2245
or via email emannard@reason.org.

Intergenerational Work

In which our man in Washington engages Social Security, searches for interns, and contemplates incriminating stains

By Michael W. Lynch

Subj: Social Security on the Potomac
Date: Thu, Jul 30, 1998 3:35 PM EDT
From: mlynch@reasondc.org

While much of D.C. and America was focused on Friday's shooting at the Capitol, your humble correspondent and his summer sidekick stuck to our more mundane policy beat Monday. After meeting in the office and fueling up on Au Bon Pain (oh what a pain) Guatemalan-blend coffee, which strives for the burnt taste of Starbucks but, like its price, falls a little shy, and a sourdough (hey, it's not New York) sesame-seed bagel, we hopped in a cab to the FDR Memorial.

We weren't sightseeing on company time. (One of the advantages of Washington is all the history and Americana one can absorb in the course of a daily routine. I play softball by the Vietnam Memorial; jog past Theodore Roosevelt Island, voted most underappreciated monument by *The Weekly Standard*'s editorial staff; and lunch in Lafayette Park across from the White House, where my mind's eye speculates on what actually happens at intern central, and then recoils at the sight.) We were headed to a Save Social Security rally sponsored by the National Council for Senior Citizens, a group which, last I heard, was 96 percent funded by the U.S. government, with the other 4 percent rumored to come from the Kremlin. The world hasn't gone their way of late: They've suffered a 4 percent budget cut.

It's no secret that supporters of the current Social Security system are worried that they got caught flatfooted as right-wing think tanks, a Harvard professor, and their own Sen. Daniel Patrick Moynihan started to seduce the public with the prospect of actually amassing wealth, rather than promises from government, with investment-based Social Security. Catch-up requires a massive miseducation campaign aimed at captive audiences, meaning editorial boards and union members. We were about to witness an event featuring the latter.

The rally was underway by the time we arrived (the bagel took longer to eat than I expected). I took my last swill of coffee and headed into the center of the crowd with my notebook and tape recorder—the tools of ignorance, as my old man used to call my catcher's gear—ready to record the events. A gray-topped lady appeared to be kicking off the rally. She assured the audience, which was composed of people who didn't need to take vacation days to pursue their political activism, that all the speakers were screened for certain criteria. "They have to know what life was like before Social Security, and they have to have fire in the belly," I think I heard her read rather quietly.

The AFL-CIO's John Sweeney was up next. Now here's a man who cares about Social Security. He cares about it enough to launch directly into class warfare with Jesse Jacksonesque rhyme, if not cadences. The theme of the day, expressed appropriately on just about everyone's head, was "Raise the Cap, Close the Gap," which is an allusion to the fact that Americans pay FICA taxes—yes, Sweeney called them "taxes," not contributions—only on the first $64,000 or so of their income. Privatization, according to Sweeney, is the "greedy few attempting to take from the deserving many." And the greedy few don't confine their malevolent avarice to destroying Social Security, nor does Sweeney confine his rhymes to retirement themes. According to Sweeney, the right wing—which may mean anyone with a nonunion job—wants to "voucherize, privatize, and pauperize education."

I bounced around the crowd, seeking shade, distance from the speaker blaring Sweeney's wisdom, and people to interview. Sweeney's exhortations to action weren't eliciting much passion. Part of the problem was the location. The FDR Memorial, like your humble correspondent's abode, is in Ronald Reagan Washington National Airport's landing path. So every few minutes, Sweeney would stop ranting as the welcome sound of jet engines displaced his wisdom in my ears.

There weren't enough landing clearances, as far as I was concerned, to adequately disrupt the next speaker, introduced to the crowd as the Independent—but known to REASON editors as the socialist—congressman from Vermont: Bernie Sanders. Bernie, happy to be in front of an audience that shared his pre–World War II view of the world, blathered on for quite some time. He inveighed against the injustice of forcing people to shell out a $5.00 co-payment for home health visits and assured the audience that the Social Security Administration, if nothing is changed, could write checks for another 34 years, which extended further than the planning horizons of most people in the audience.

By this time, your humble correspondent was working the crowd, attempting to figure out where people came from, what they did, and why they were here. A retired nurse from Philadelphia knew what she wanted: "no privatization." Don and Dot Davis, recently transplanted from Michigan to South Carolina, said the "fat

HENRY PAYNE

cats on Wall Street have enough money." They were especially concerned about their "fat cat" representative, Mark Sanford, who they claimed is one of the people who pay no taxes and are pushing for privatizing Social Security. They were planning to discuss it with him later in his office, although they didn't expect it to help.

George W. Banks, a retired international representative of the United Steel Workers, hit on an ingenious theme for why we need Social Security: It's not, in REASON Contributing Editor Jack Pitney's formulation, about gray socialism; it's about baby blue socialism. [See "The Colors of Socialism," June 1997.] Said Banks, "We have many children who are sick and injured who would be dropped out of the system if it was privatized." He shared a bus with 40 Ohio citizens who shared his concern for children.

The crowd wasn't all elderly. Three students—Logan Jones (ninth grade), Lakia Rutherford (12th grade), and Elan Fenderson (eighth grade), were down from Boston, where they were spending the summer doing "intergenerational" work funded by a private grant secured through their church. "Intergenerational work," I thought to myself. "Hell, pick up a phone and call your grandma. If you want to be an activist, go visit her."

Now your humble correspondent has always had an interest in both the old and young, thinking there is much to be learned from both, which is why this event interested me. We didn't confine our conversation to Social Security. Logan wants to attend Florida State University, where he plans to run track. I was concerned about the humidity, but it doesn't seem to worry him. Lakia, eschewing Harvard because "there's too much pressure," plans to head to Atlanta for college at the urging of her mother. It's too early for Elan to pick a school. They planned to visit the White House, for which Lakia said her friends called her "crazy." And despite Friday's tragedy, they were counting on heading over to the Hill before boarding a bus back to Boston on Wednesday.

These kids take Social Security seriously. Lakia, the triumvirate's oldest and most articulate, analogized the stock market to gambling, although that's were she plans to put her extra money. And she understands Social Security isn't perfect. She complained that her grandmother, who's on Social Security and needs the money, is shorted by the system because "they take out so much money that she really doesn't have much money to do with it at the end." Lakia told me, "I want to get more money."

Well, Lakia, the "they" is the government, and the money it takes we call "taxes." She's well on her way to being a libertarian.

Speaking of intergenerational work, while I headed back to REASON's D.C. headquarters just a block away from the White House, my summer sidekick followed the rally to the other end of Pennsylvania Avenue, where the NCSC was holding another rally before turning its 44 busloads of seniors loose to lobby the Hill. He filed a report for Citings.

P.S. As a purely political matter, I can see how these seniors are influential. They are wonderful to talk to and genuine in their concerns, reminding me of the folks I used to run across at the after-church social hour as a kid. Hell, if I had a choice between hanging out with any of these folks or [Americans for Tax Reform's Social Security expert] Peter Ferrara, who nearly chopped my lovely wife's arm off last night as he foraged feverishly on a buffet at The Polling Company's open house, I would take the socialist seniors. The reception, BTW, was well worth the stop. Diana, who leaped in front of me when Ferrara threatened to crowd her out of the line, and I shared some Caesar salad, meatballs, and chicken, as she sipped on Chardonnay and I a Coors Light. Philip Morris had obviously donated a truckload of cigarettes, so she was able to abscond with a pack of Marlboro Ultra Lights, her favorites.

Subj: Girls with Guns
Date: Mon, Aug 10, 1998 3:42 PM EDT
From: mlynch@reasondc.org

Spent a couple hours last Thursday afternoon at the National Rifle Association's firing range with four female interns and two permanent staffers from Grover Norquist's Americans for Tax Reform. A woman from the Small Business Survival Committee, whose office is near ATR, was also present.

A couple of things prompted your humble correspondent to head out of his office at 4 p.m., hop into his car, and fight traffic on Highway 50 (I couldn't use the more convenient I-66, since it was HOV-restricted) to get to the NRA world headquarters just outside the Capital Beltway in northern Virginia. The obvious, of course, is the pure salaciousness of the operation. The clichés are obvious: girls with guns; short skirts, long barrels; babes with arms; etc. But I was also seduced by the intern angle.

Spent a couple hours last Thursday afternoon at the National Rifle Association's firing range with four female interns. A couple of things prompted me to head to NRA world headquarters. The pure salaciousness of the operation is obvious, as are the clichés: girls with guns; short skirts, long barrels; babes with arms; etc. But I was also seduced by the intern angle.

Washington's legions of interns are always worthy of observation and comment, but more so this year than any other. After the Lewinsky story broke, I opined that such mentor-mentee relationships were quite common across fields. Virginia disagreed, claiming that, power relationships being especially acute in Washington, there was more misbehaving in Chuck Freund's hometown than in America's other major metropolitan areas. I set out to get the story, calling Hill contacts to dish me dirt. I was unsuccessful, even when pleading, "It's not your boss that I want. Tell me about the slimes on the other side of the aisle."

The prolifically witty Stephen Glass, then of *The New Republic*, had no such trouble, reporting on a watering hole

where White House interns congregate. Monica, you see, was a "clutch," which meant something I forget and don't want to waste time checking, since, like many of Glass's good stories, it was probably made up. Worse yet, a few weeks, or perhaps a couple of months, later I met a woman at a Capitol Hill party who knew me only as the guy who called looking for evidence of such transgressive relationships. I was boinking my boss a few years ago, I recall her saying to me, adding that she was in the office when I called. But even then—face to face at a party, with beers in our hands, and deep into a conversation—she wouldn't give me the story, claiming that her dad would kill her if he knew.

So I've been looking for an intern angle all summer.

Your humble correspondent arrived late at the NRA, due to traffic, a missed fork in the road, and, of course, the desire to leave my office at the last possible moment, so as to maximize my day's productivity. The handgun safety course, taught by a fellow named Jim, was already under way. I was greeted and John, another NRA official, asked if I was going to be shooting. I hesitated, but said yes.

I come from a long line of proud gun owners and hunters, including some women in my family. My great aunt, made motherless early in life, once told me of her father's admonition to keep a pistol under the front seat of her car, which she heeded for some time. My grandmother (her sister) preferred shotguns and rifles. And my godmother is known for her markswomanship—always killing her share of the weekend's duck limit.

But although I am a theoretical enthusiast, I've never had a taste for guns. Part of this has to do with the fact that I don't hunt, due to dispositional conflicts with getting up well before dawn in order to freeze for a few hours, all for the pleasure of eating something which others will happily provide. Then, too, my last association with guns—assault weapons, I believe—was in a Washington state forest with two buddies and what appeared to be an unlimited supply of beer. I spent much of the rainy weekend reading P.J. O'Rourke's *Holidays in Hell* in my car, wishing it were armor-plated.

After we completed our training course, we heading into the NRA's zero-lead-emission firing range, which, Jim pointed out, was a testament to the NRA's deep concern for the environment. Laura, soon to be a Smith College senior majoring in chemistry and French literature, fired first, discharging a Smith and Wesson revolver. Laura popped off five rounds, and her aim was quite impressive. Only four holes pierced the target, since she shot through the same one twice.

The next stall over, Jim instructed Liza, who was spending the summer persuading members of state legislatures to take ATR's anti-tax pledge, on the rudiments of the Glock, a fiercer-looking pistol which sends flames out the barrel and expels spent shells back toward the shooter. "You want to be a stable shooting platform," Jim told Liza. Every young woman's dream.

One intern, Maryanne from American University, found the firing transformative. Maryanne fell victim to the anti-gun conspiracy in her freshman year. Somehow, the economics major found herself under the temporary supervision of Handgun Control Inc., which forced her to handle a weapon—a very large one, she reported—which scared her a great deal. As a result of this trauma, she found herself at the NRA only after much coaxing by fellow ATR associates, who advised her to face her fears.

"It's OK, but I don't want to do it every week," Maryanne responded, when I asked how she felt about her second experience. Good thing too, since time spent firing guns would be time not spent working on the Reagan Legacy Project, which, as Chuck knows, was the power behind the renaming of Washington National Airport. [Washington native Chuck Freund did not cotton to having Congress change the airport's name without consulting the locals.]

If you must know, I fired off five rounds with the Smith and Wesson revolver. The target was a mere 15 feet away, and I envisioned the holes appearing closer to the center of my target than they actually did. John was kind, however, telling me that I shot a tight pattern. But that was probably only because he wanted a quote.

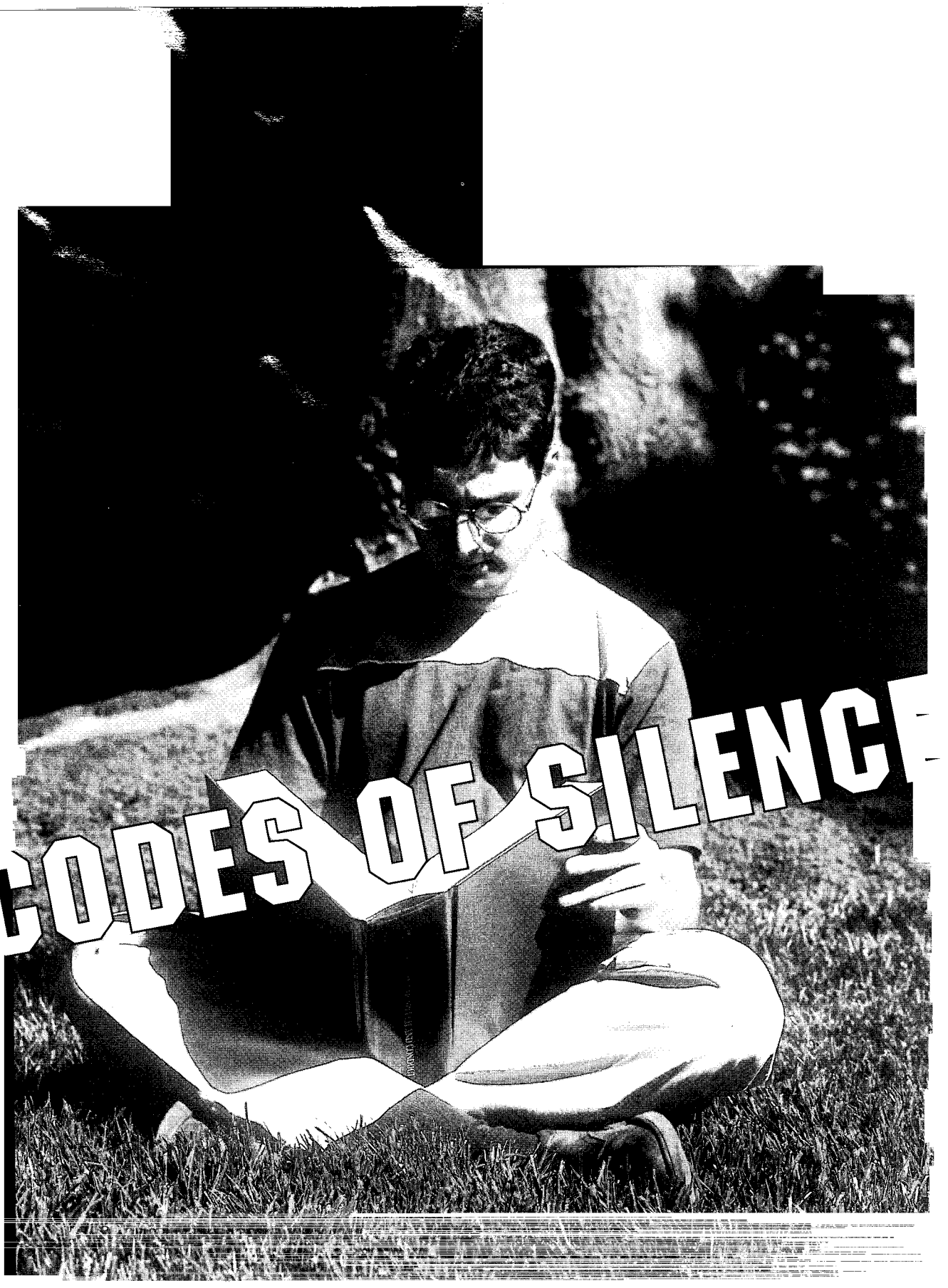
My mom taught me not to eavesdrop, but I couldn't help but overhear pressing questions such as, "Who doesn't wash their dress for five years?" (is it really five years old?), followed by, "I don't even have a dress from five years ago, and if I do, it's in the closet dry-cleaned," and, "She's keeping a souvenir."

Subj: Local Angle
Date: Tue, Aug 4, 1998 6:45 PM EDT
From: mlynch@reasondc.org

Not sure what the talking heads are saying today about whether Clinton should issue a mea culpa, but the chattering classes in my gym indicate that it's Lewinsky, not the president, who owes us an apology.

This afternoon found your humble correspondent riding the Lifecycle at level 10, random setting, for 40 minutes while reading Brink Lindsey's latest Cato study, which feeds Chalmers Johnson, Clyde Prestowitz, and James Fallows their pro–Japan-model predictions back to them in bite-sized paragraphs. Interspersed among such morsels as Prestowitz's "Japan has created a kind of automatic wealth machine, perhaps the first since King Midas," my left ear was assaulted with, "Have you seen the short skirts them White House interns wear?"

My mom taught me not to eavesdrop, so I attempted to block out the banter and get back to Brink. Still, I couldn't help but overhear pressing questions such as, "Who doesn't wash their dress for five years?" (is it really five years old?), followed by, "I don't even have a dress from five years ago, and if I do, it's in the closet dry-cleaned," and, "She's keeping a souvenir." This wasn't, of course, a scientific poll, something which I hope provides Chuck with some relief, but more like a two-, soon to be three-person focus group conducted


CODES OF SILENCE

one block from the White House's West Wing.

"What do you think about him lying?" I heard in an elevated tone. I must admit that by this time comments like "Hillary's a lesbian anyway," "I'm just mad it wasn't me," and "Maybe they had a menage à trois" had distracted me from Brink's useful analysis, producing chuckles and smiles deeper than any likely to come from even the most absurd Fallows howler. But I was still a bystander, or cyclesitter. "Shouldn't they just leave him alone?" asked a louder, more persistent voice.

I was obviously being invited to play. I turned my head, noted that I still had 21 minutes to pedal, and engaged. "What if he pressured others to lie?" I asked the woman who was walking a brisk pace on the treadmill. This didn't bother my interlocutor, who reported that when she worked as a civilian on a military base, all sorts of people were committing adultery with their spouses' blessings, and that this was probably the president's case. The other woman, whose name I don't know but whose face is familiar from afternoon workouts, said something about heading over to the White House, still miffed that she was missing out.

Then the subject turned to money. "There's kids going hungry right here in D.C.," said the indignant treadmill trotter. "Why did they need to build that Ronald Reagan building? Have you seen that building?"

Actually I haven't, but I headed off this argument quickly, employing a bit of jobilism. "That big building is going to be filled with workers," I said. "Besides, it was going to be built anyway—they just named it after Reagan." This didn't hold the treadmill-traipsing woman off for long. A woman after Chuck's heart, she shot back: "Why did they need to rename National Airport?" she asked. "You know how much that cost?"

Nobody knew, and we let it drop at that. She thought Reagan should have been investigated. I reminded her that he had been. She retorted that it didn't matter since "his wife, what's her name," ran the White House for the last two years.

Her time on the treadmill was almost up anyway. I noticed her pace slacken as the cool-down period kicked in. She said something about that being the fastest half-hour walk ever and that perhaps she should tackle some personal problems next time. We decided if we ever found ourselves in such a state again, we'd devote a half hour to current events and a half hour to her personal problems, which would include work, so she could get an hour in.

Your humble correspondent looked at his clock. Five minutes to go before I jumped over to her treadmill.

Subj: Lolita
Date: Tue, Aug 25, 1998 11:47 AM EDT
From: mlynch@reasondc.org

In my copious spare time, I have been reading Vladimir Nabokov's *Lolita*, which I found on our friends' shelf as I was hiding in the basement from my babysitting duties a few weekends ago. A wonderful read, *Lolita* is—one that, like a Nick Gillespie article, is expanding my limited vocabulary. (Although I must say that having to cart around *Webster's New Universal Unabridged Dictionary* cuts down the paperback's portability.) Nevertheless, I came across a gem on pages 164–165 that may be of some interest to us in light of current events.

We find our friend Humbert Humbert concerned that he may be caught in his scandalous affair as he takes leave from his nomadic existence and settles into a house:

"That kindly and harmless woman [Holigan, his maid] had, thank God, a rather bleary eye that missed details, and I had become a great expert in bedmaking; but still I was continously obsessed by the feeling that some fatal stain had been left somewhere, or that, on the rare occasions where Holigan's presence happened to coincide with Lo's, simple Lo might succumb to buxom sympathy [oh, that buxom sympathy] in the course of a cozy kitchen chat. I often felt we lived in a lighted house of glass, and that any moment some thin-lipped parchment face would peer through a carelessly unshaded window to obtain a free glimpse of things that the most jaded voyeur would have paid a small fortune to watch."

A small fortune indeed.

LIBERTY ISN'T FREE

Its price is eternal vigilance. Over 11,000 Cato Sponsors are willing to pay the price of liberty. Cato Sponsors make annual tax-deductible contributions ranging from $50 to $3,000 or more, advancing the American experiment in limited government and individual liberty and entitling them to receive Cato's outstanding Policy Analysis series and other publications.

Should you be a Cato Sponsor?

CATO INSTITUTE

1000 Massachusetts Avenue, N.W., Washington, D.C. 20001 • (202) 842-0200 • Cato@Cato.org

Who's gagging free speech on campus—and why

by Alan C. Kors and Harvey A. Silverglate

In Carnegie-Mellon University's "Policy on Free Speech and Assembly," originally adopted in 1988 and republished periodically in the faculty and student handbooks, the university says it "encourages freedom of speech, assembly and exchange of ideas. This includes the distribution of leaflets and petitions, as well as demonstrations or protests involving speaking, discussion or the distribution of information." CMU's policy statement then sets forth content-neutral restrictions on the time, place, and manner of speech, applied equally: "The enforcement of these restrictions will not depend in any way on any subject matter involved in a protest or demonstration."

Going even further, CMU's "Statement Concerning Controversial Speakers," issued by its trustees at the height of the Vietnam War protests in 1967, reaffirmed in 1979, and republished annually, offers a ringing endorsement of academic freedom and free speech: "The assumptions of freedom are that men and women will more often than not choose wisely from among the alternatives available to them and that the range of alternatives and their implications can be known fully only if men and women can express their thoughts freely."

The CMU statement warns that the exercise of academic freedom, essential to the university's mission, will not always be pleasant to experience, but that such unpleasantness does not change the need to protect it: "It is inevitable that such an environment will from time to time appear to threaten the larger community in which it exists. When, as they will, speakers from within or from outside the campus challenge the moral, spiritual, economic or political consensus of the community, people are uneasy, disturbed and at times outraged....But freedom of thought and freedom of expression cannot be influenced by circumstances. They exist only if they are inviolable."

That was then. This is now. In 1991 CMU promulgated its "Policy Against Sexual Harassment." While reiterating in the first paragraph the university's dedication "to the free exchange of ideas and the intellectual development of all members of the community," suddenly, with barely a transition, CMU proceeded to outlaw, among other things, "verbal conduct of a sexual nature [when it] has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment."

Now CMU places the need for "the free exchange of ideas" in the same sentence as the need to promote "the intellectual development of all members of the community." Because the truly unfettered exercise of free speech can create a "hostile environment" that deprives a category of "historically disadvantaged" students (in this case, women) of being able to participate in the life of the university, such speech must be restricted. One student's freedom has to be restricted in order to assure another's.

The notion that one person's freedom must be restricted to protect another's is hardly controversial in itself. "Your right to throw your fist ends at the tip of my nose" is a common formulation in law and ordinary life. Yet the notion that *speech* may be restricted, particularly on an academic campus, is new and very different. The notion that the tip of one's nose defines

PHOTOS: HOLLY FREEDMAN

the limit of a physical assault has been transformed into the notion that the tip of one's ego defines the limit of a verbal "assault." Equally significant, this protection against a "hostile environment" and certain other consequences of speech is restricted, by the explicit terms of university policy, to certain categories of "disadvantaged" students identified by sex, race, sexual orientation, and disability.

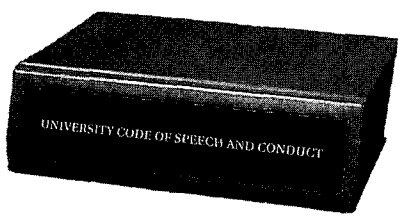
It seems surprising, at first glance, that the most potent and far-reaching assault on the First Amendment's central principal—content neutrality—has come not from politicians protecting power or reputations, nor from government agencies protecting their notions of decency or security, but from America's universities, where academic freedom has been thought to require more liberty and tolerance than in "the real world," not less. More startling yet, this assault comes above all from the political and cultural left, which, since World War I, has been the prime beneficiary of the move toward near-absolute constitutional protection for speech. Indeed, the legal doctrine of free speech has focused crucially on the rights of revolutionaries, counterculturalists, antiwar protesters, visionaries, prophets of doom, progressives, and, generally, dissidents from Western capitalism. How is it, then, that today's most vocal critics of the First Amendment are in the academy and on the left—the heirs, in fact, of the generation that, 35 years ago, gave us the Berkeley Free Speech Movement?

The contemporary movement that seeks to restrict liberty on campus has its roots in the provocative work of the late Marxist scholar Herbert Marcuse, a brilliant polemicist, social critic, and philosopher who gained a following in the New Left student movement of the 1960s. Marcuse developed a theory of civil liberty that would challenge the essence and legitimacy of free speech. Although he repeatedly declared his belief in freedom and tolerance, Marcuse built on the work of Rousseau, Marx, and Gramsci to articulate an alternative conception of liberty, placing him at odds with the Free Speech Movement, the U.S. Supreme Court's First Amendment doctrines, academic freedom, and the values of most liberal democrats. This alternative framework, which used some traditional terms but assigned them new meanings, became the foundation of academic speech codes.

In a 1965 essay entitled "Repressive Tolerance," Marcuse concluded that America's supposedly neutral tolerance for ideas was in reality a highly *selective* tolerance that benefited only the prevailing attitudes and opinions of those who held wealth and power. Such "indiscriminate" or "pure" tolerance, he argued, effectively served "the cause of oppression" and the "established machinery of discrimination." For Marcuse, as long as society was held captive by militarism and by institutionalized, pervasive social and economic inequality—what he characterized as "regressive" practices—"indiscriminate tolerance" necessarily would serve the highly discriminatory interests of regression.

The holders of power, Marcuse argued, maintained their control by keeping the population "manipulated and indoctrinated," so that ordinary people "parrot, as their own, the opinion of their masters." In such circumstances, "the indiscriminate guaranty of political rights and liberties" is actually "repressive." The "class structure of society," Marcuse wrote, creates "background limitations of tolerance" that necessarily limit true democratic tolerance even before the courts create whatever explicit limitations they devise (such as "'clear and present danger,' threat to national security, heresy"). He believed that "within the framework of such a social structure, tolerance can be safely practiced and proclaimed" by those in power because dissenting—even radical—voices were powerless to change that structure.

Marcuse did not directly assail the notion that ideas for societal change should be, in his words, "prepared, defined, and tested in free and equal discussion, on the open marketplace of ideas and goods." Rather, he asserted that the current "marketplace" was rigged because of its "background limitations." Before a *true* marketplace of ideas could be established, allowing genuine democracy to flourish, current inequities would have to be eliminated, and this could not be done while equating the rights of dominant regressive expression and of marginalized progressive words and ideas. If the powerful and the weak were required to play by the same rules, Marcuse argued, the powerful always would win, and this would have dire consequences, since the powerful supported an agenda of war, cruelty, and repression.



The contemporary movement to restrict liberty of the late Marxist scholar Herbert Marcuse, following in the New Left student movement o

According to Marcuse, the indoctrinated had to be given the tools with which to see the truth. How were people to be freed from the bonds that keep them prisoners under a purely illusory tolerance? Marcuse responded that "they would have to get information slanted in the opposite direction, [which] cannot be accomplished within the established framework of abstract tolerance and spurious objectivity." He posited that there was a true and superior species of "tolerance which enlarged the range and content of freedom." This tolerance, however, "was always partisan," because it was "intolerant toward the protagonists of the repressive status quo." For Marcuse, tolerance was moral and real only when harnessed to the cause of "liberation."

Given the current structure of society, a nominal freedom that allowed the expression of "false words and wrong deeds" to work against the attainment of "liberation" and of true "freedom and happiness" became "an instrument for the continuation of servitude."

For a revolutionary theorist, Marcuse was refreshingly frank. The "reopening" of the channels of true toleration and liberation, now "blocked by organized repression and indoctrination," must be accomplished sometimes by "apparently undemocratic means." Marcuse suggested that these would include "the withdrawal of toleration of speech and assembly from groups and movements which promote aggressive policies, armament, chauvinism, discrimination on the grounds of race and religion, or which oppose the extension of public services, social security, medical care, etc."

"Liberating tolerance," Marcuse wrote, in contrast to "indiscriminate tolerance" or "repressive tolerance," would be "intolerance against movements from the Right, and toleration of movements from the Left." This duality "would extend to the stage of action as well as of discussion of propaganda, of deed as well as of word." It was important that intolerance apply to regressive words as well as to regressive deeds, because, for Marcuse, words had real consequences, and if the consequences were to be avoided, the words must be silenced.

Marcuse's premise, which separated his political philosophy fundamentally from First Amendment jurisprudence, was that liberty, in the current stage of historical and social development, is a zero-sum game: "The exercise of civil rights by those who don't have them presupposes the withdrawal of civil rights from those who prevent their exercise." For Marcuse, the application of these "anti-democratic notions" would foster a society that promoted universal tolerance and true freedom. To achieve a society of universal tolerance, one could not tolerate reactionary ideas.

Marcuse focused on the education of the young: "The restoration of freedom of thought may necessitate new and rigid restrictions on teaching and practices in the educational institutions which, by their very methods and concepts, serve to enclose the mind within the established universe of discourse and behavior." Because students already were so heavily brainwashed to think in the manner that established power had ordained, true "autonomous thinking" was virtually impossible, and one had to take steps to wrench students from the regressive channels into which society had cast their minds. "The pre-empting of the mind vitiates impartiality and objectivity," he wrote. "Unless the student learns to think in the opposite direction, he will be inclined to place the facts into the predominant framework of values." Marcuse mocked the "sacred liberalistic principle of equality for 'the other side,'" because "there are issues where...there is no 'other side' in any more than a formalistic sense."

Indeed, Marcuse confidently posited that it would not be difficult to determine "the question as to who is to decide on the distinction between liberating and repressing, human and inhuman teachings and practices." The distinction between these two poles, he assured his readers and students, "is not a matter of value-preference but of rational criteria." Once the rational criteria were identified, truth was easy to determine. With this certainty, Marcuse believed that he could describe the means by which the academy should bring about this "reversal of the trend in the educational enterprise." Ultimately, such a reversal should "be enforced by the students and teachers themselves, and thus be self-imposed, the systematic withdrawal of tolerance toward regressive and repressive opinions and movements." In the short term, Marcuse proposed that the academic shock troops of this revolution "prepare the ground" for effecting such changes, even if that might involve a resort to violence. Marcuse was not troubled by this, because "there is a difference between revolutionary and reactionary violence, between violence practiced by the oppressed and by the oppressors."

In short, to produce conditions in which freedom could flourish first on campus and then in the greater society, re-education in a progressive university was essential. Revolutionary thinking then could break the stranglehold of the powerful on the minds of students and citizens. This re-education alone could create a "progressive" society, where true freedom and democracy would reign. Once this had been achieved, Marcuse promised, there would be no further need for "anti-democratic" expedients that were, after all, aimed simply at redressing the imbalance between "oppressor" and "oppressed." Censorship during this "reversal" was essential, because ubiquitous, dangerous, and regressive notions were too quickly translated into practice. Indeed, censorship, for Marcuse, must be deeply pervasive, although historically temporary. The result, he promised, would be to restore *real* freedom, and the words *freedom* and *liberty* once again could attain their "true meanings."

Marcuse's prescriptions for a progressive society have not noticeably taken root in the "real world" outside the academy.

n campus has its roots in the provocative work rilliant polemicist, social critic, and philosopher who gained a ıe 1960s with his writings on "repressive tolerance."

Most of the trends toward greater free speech for all—trends that he so abhorred—have accelerated in the three decades since he published his essay. Nevertheless, Marcuse's prescriptions are the model for the assaults on free speech in today's academic world.

Drafters of college speech codes almost invariably begin by setting out the core principle of any self-proclaimed liberal arts institution of higher learning—that the pursuit of teaching, learning, and research relies on academic freedom and on freedom of speech and inquiry. They posit the necessity of including all members of the academic community in this pursuit and proceed to take steps purportedly aimed at making these social and educational opportunities available to all. To ensure these benefits to groups of students perceived to be "historically underrepresented" or "historically disadvantaged," the codes severely limit the speech rights of individual students by prohibiting the utterance of certain unkind and, they claim, destructive words.

We have studied hundreds of these codes. While some definitions of banned speech are extremely broad and others sub-

SUPPRESSION 101: A Quick Tour of Campus Speech Codes

The speech-code provisions of harassment policies are merely symptoms of the willful assault on liberty on our campuses: the suppression and punishment of controversial and unpopular ideas; the banning of terms that offend listeners invested with special rights; and the outlawing of discourse that, in the eyes of the defenders of the new orthodoxies, "creates a hostile environment." The essential purpose of a speech code is to repress speech. Many codes explicitly encourage charging a student with sexual harassment even if his intent is innocent.

■ At the University of Puget Sound, there is no obligation even to hint to a speaker that his speech is unwelcome, for "whether conduct is unwelcome depends on the point of view of the person to whom the conduct is directed. [While] it is generally better for the person harassed to make it clear that the conduct is unwelcome," the conduct may be found to be unwelcome even if the person did not manifestly object to it.

■ The City University of New York warns that "sexual harassment is not defined by intentions, but by impact on the subject." As Herbert London, a dean and a professor of humanities at New York University, notes, "accusations are based on 'impact,' not intention, therefore, the accused is guilty, if the accuser believes him to be guilty."

■ Bowdoin College has a broad definition of harassing speech, which includes "telling stories of sexual assault which minimize or glorify the act." (So much for reading the epics aloud!) This formulation would appear to bar a male from stating to a female that there are worse things in life than "date rape"—a view that might irritate some but that clearly is core political opinion. Should a man be held liable for expressing such views to a woman who might "experience" it as harassing? Also proscribed are "leering, staring, catcalls, vulgar jokes, language, photographs or cartoons with sexual overtones" and even "terms of familiarity." Despite the extraordinarily broad range of prohibited speech, the speaker at Bowdoin is obligated to discern when speech will be perceived by the listener as harassing. "No one," warns the code, "is entitled to engage in behavior that is *experienced by others* as harassing," regardless of the speaker's intentions or the unreasonableness of the victim's assumptions. This creates a world where speakers must walk, in a fog, on the edge of a cliff.

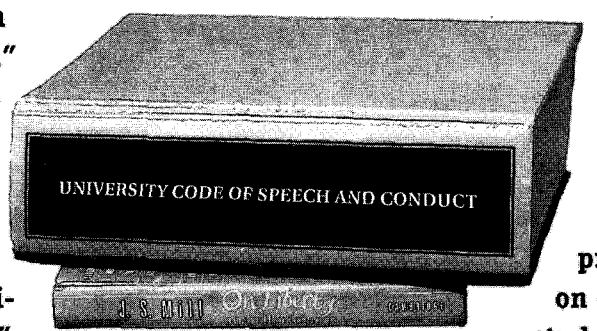
■ At the University of Connecticut, the code bans "treating people differently solely because they are in some way different from the majority,...imitating stereotypes in speech or mannerisms,...[or] attributing objections to any of the above actions to 'hypersensitivity' of the targeted individual or group." Henry Louis Gates Jr. has labeled this hypersensitivity provision "especially cunning" because "it meant

stantially narrower, differences from one code to another are matters of degree rather than of kind. A suspension of belief in the ordinary meanings of words is required to accept the contradictions so often contained within the same code, frequently within the same paragraph, and sometimes within the same sentence. On the one hand, the codes claim to cherish free speech and academic freedom, including the freedom to express even the most challenging and offensive ideas; on the other, certain categories of "offensive" speech are banned in order to create a "comfortable" and "inclusive" learning atmosphere.

The ability of a university to endorse two contradictory policies can perhaps be explained as simple hypocrisy. Indeed, this does appear to be part of the answer on many campuses, where administrators have agendas far removed from the common pursuit of knowledge. Whether hypocritical or sincere, however, the drafters of these codes feel a need to justify the seemingly contradictory goals of free speech and free inquiry, on the one hand, and limitations on speech to achieve equal access to educational opportunity, on the other. Reconciliation of these opposing concepts is achieved primarily by Marcusean logic.

that even if you believed that a complainant was overreacting to an innocuous remark, the attempt to defend yourself in this way would serve only as proof of your guilt."

■ Syracuse University's sexual harassment code explains why sexual harassment, which includes "leering, ogling,...sexual innuendoes, [and] sexually-derogatory jokes," is such a serious violation: "What these behaviors have in common is that they focus on men and women's sexuality, rather than on their contributions as students...in the University." Syracuse's admonition—that "sexual harassment is not about voicing unpopular ideas" but, rather, is "a form of intimidation," and therefore that some types of speech are forbidden—is contained not in the code's definition section but in its section on "academic freedom." The Orwellian justification for this placement is that harassing speech "can silence some members of the University community," so banning offensive speech actually promotes rather than limits academic freedom.



■ The conflict between the highly individualistic nature of academic freedom and the anti-individualism of group protection figures prominently in Columbia University's "Policy Statement on Discrimination and Harassment." Adopted by the University Senate in 1990, the policy begins by proclaiming that "Columbia University prides itself on being a community committed to free and open discourse and to tolerance of differing views." This being so, as "a community, we are committed to the principle that individuals are to be treated as human beings rather than dehumanized by treatment as members of a category that represents only one aspect of their identity." Yet the policy then allocates special treatment to individuals precisely on the basis of a single aspect of their identity. Students considered, because of their group identities, to be "most vulnerable to discrimination and harassment" are given more protection than others, ostensibly to allow them to be individuals. As the pigs said in Orwell's *Animal Farm*, "All animals are equal, but some animals are more equal than others."

These codes share a common premise: that to effectuate freedom on campus, so that "disadvantaged" students participate in the campus community equally with "advantaged" students (all defined by blood and history), speech must be restricted. Freedom is highly valued in theory, but providing equal access to it requires its destruction.

—A.C.K. and H.A.S.

The attempt to balance the right of free speech with the "right" to be free from harassment deeply reflects Marcuse's notion of "freedom" and "tolerance." It is a fundamentally Marcusean idea that tolerance must be redefined to advance a positive social and moral agenda. The codes express a deep commitment to freedom of speech and inquiry, but when they express an equal commitment to a group member's right to be free from verbal harassment, it leads, in the name of positive freedom, to the wholesale banning not only of speech and other traditional modes of expression but even of looks, body language, and, in some cases, laughter. It leads, in short, to progressive intolerance.

At the time of McCarthy, many were intimidated into silence b protect the speech of a Red if you are not a Red?" The issue or that person's rights by our subjective criteria of who deserve

A window into the thinking of some speech code crafters is found at Stanford University. The initial draft of Stanford's code was strongly influenced by professor Thomas Grey of the law school, who has posited that, under certain circumstances, constitutional commitments to freedom of expression, and to civil liberties in general, conflict with the nation's commitment to providing equal access to educational opportunities, and to civil rights in general. In a 1991 article in the *Harvard Journal of Law and Public Policy*, Grey expresses discomfort at the collision but considers the conflict "inescapable." In his view, the tension between academic freedom and equal educational opportunity arises from an inherent conflict between civil liberties and civil rights, between liberty and social equality.

This premise is problematic. Freedom of speech is a "liberty interest," and it deals solely with an individual's ability to express himself or herself as he or she desires. In contrast, civil rights legislation is largely protective and egalitarian, expressing the broader societal concern with how citizens are faring in comparison to other citizens. Put another way, the First Amendment protects the individual from the oppressive exercise of government power, whereas civil rights jurisprudence offers the individual recourse to the government for assistance in obtaining the necessary tools and opportunities to reap the benefits of equal participation in economic, social, and cultural life.

To bridge the perceived gap between libertarian and egalitarian interests, speech code drafters accept the dramatic thesis that individual speakers express not only their own individual views, but also those of their entire gender or ethnic group. In Stanford's speech code, banned epithets reflect "a widely shared, deeply felt, and historically rooted social prejudice against people with that [derided] trait." Because the speaker of such epithets is expressing a "widely shared prejudice," he or she has ceased to speak as an individual or to express merely his or her own thoughts, and has become a living symptom and symbol of societal oppression.

In Grey's view, such statements "make the atmosphere more difficult for [members of targeted groups] on a campus and hence deny them a level educational playing field with students not so stigmatized." A "difficult atmosphere" is, thus, the deprivation of rights and opportunities. It is therefore appropriate, by this theory, to halt the speech of individuals (and to deny their status as discrete, autonomous beings) in order to combat this cumulative effect. The traditional formula—that free speech is allocated equally to all and is not to be limited in terms of content and viewpoint—perpetuates majority dominance. Individual equality before the law must be sacrificed in the name of equal opportunity for the members of groups.

Grey justifies the unequal application of speech restrictions by making an analogy between the campus and the workplace. Grey recognizes that traditional First Amendment jurisprudence prohibits the government from restricting speech on the basis of content and viewpoint, except in very limited and long-recognized areas, such as defamation, obscenity, and threats. In Grey's mind, however, special circumstances created by unequal power relationships between management and labor justified differential allocation of speech rights in the workplace, including constraints upon certain categories of speech and viewpoints. Thus, he finds that American labor laws could sanction an employer for stating, during a union organizing election: "If I have to pay union rates, I doubt I'll be able to keep this plant open."

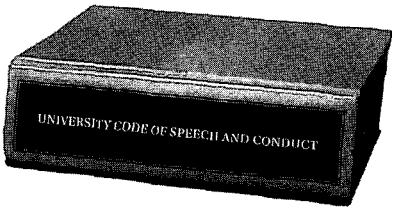
That, argues Grey, is treated as a threat to the workers and prohibited as an unfair labor practice directed at discouraging union organizing. On the other hand, the government would not be able to punish an employee for saying, in the same context, "Employers who resist unionization often find a less cooperative work force afterwards." The reason for such different treatment is based, Grey concludes, on the power differential between employer and employee. From this, he moves to the proposition that the insults "nigger" and "whitey" are not equivalent because "American society and its history have created the asymmetry [between the black and white races]; a regulation cannot attempt to redress that asymmetry without taking it into account." Grey denies that it is "patronizing to students of color" to restrict insults hurled at them without restricting insults hurled at others. The vulnerability of black students and

their lesser ability to "take care of themselves in verbal rough-and-tumble"—in short, their status as a "'protected group" that is "in need of official protection"—is a product of history.

University administrators seem unconcerned by the double standards and differential allocation of rights fostered by such policies. Speech codes mandate a redefined notion of "freedom," based on the belief that the imposition of a moral agenda on a community is justified by, in Marcuse's words, "the historical *calculus of progress*," in which every enlightened and rational person naturally strives to reduce "cruelty, misery and suppression." Since the reduction of "cruelty, misery and suppression," in this view, requires less emphasis on individual rights and more on assuring "historically oppressed" persons the means of achieving equal rights, liberty must, for now, take a back seat.

The whole notion of individual liberty becomes subordinated to redressing historical wrongs against groups. Codes dismiss free speech rights in favor of a predetermined notion of historical moral responsibility, commanding students and faculty to censor themselves and one another in the paramount interests of the educational community and historical justice. Restrictions on speech are justified by the assertion of a compelling need to promote freedom for some by limiting freedom for others. To the code writers, as to Marcuse, freedom is a zero-sum game.

he question "Why would you want to hen and now, is not the protection of this reedom but the protection of freedom itself.



Many in the academy insist that the phenomenon labeled "political correctness" is a fabrication by opponents of "progressive" change. They argue that political correctness does not exist as a systematic, coercive, repressive force on American campuses. They claim that critics of universities have questionable motives and offer merely recycled anecdotes, not hard evidence, of abuses of power.

Such views seem odd to those—students, faculty, and close observers—who dissent from prevailing campus orthodoxies and experience the unremitting reality of speech codes, of ideological litmus tests, and of sensitivity and diversity "training" that undertakes the involuntary thought reform of free, young minds. One charge of verbal harassment casts a pall over everyone's "thought crimes," producing systemic self-censorship. Yet defenders of the current academic regimes list that charge merely as "one" instance of what may be, in their view, constraint. A climate of repression succeeds not by statistical frequency but by sapping the courage, autonomy, and conscience of individuals who otherwise might remember or revive what liberty could be. The claim that McCarthyism was a myth, and that a small number of anecdotes have been recycled to create the appearance of systematic repression, would be met with incredulous (and justifiable) outrage by the left.

Human history teaches that those who wield power rarely see their own abuse of it. This failing pervades the entire ideological, political, cultural, and historical spectrum. It is an issue not of left and right but of human ethical incapacity. Those who exercise power, in any domain, tend to compare their actual power to their ultimate goals, usually concluding that they have barely any power at all and, certainly, that they are not abusing what little they have.

Further, most of us sadly develop the capacity to treat the suffering, oppression, or legal inequality of individuals or groups whom we see as obstacles to our own goals or visions—or even with whom we merely feel little affinity—as abstractions or exaggerations without concrete human immediacy. By the same token, most of us experience the suffering, oppression, or legal inequality of individuals or groups with whom we identify, or to whom our own causes are linked, as vivid, intolerable, personal realities. It is precisely to neutralize this grievous tendency of human nature that societies establish formal law, equal justice, and the prohibition of double standards.

Our colleges and universities do not offer the protection of fair rules, equal justice, and consistent standards to the generation that finds itself on our campuses. They encourage students to bring charges of harassment against those whose opinions or expressions "offend" them. At almost every college and university, students deemed members of "historically oppressed groups"—above all, women, blacks, gays, and Hispanics—are informed during orientation that their campuses are teeming with illegal or intolerable violations of their "right" not to be offended. Judging from these warnings, there is a racial or sexual bigot, to borrow the mocking phrase of McCarthy's critics, "under every bed." At almost every college and university, students are presented with lists of places to which they should submit charges of verbal "harassment," and they are promised "victim support," "confidentiality," and sympathetic understanding when they file such complaints.

What an astonishing expectation (and power) to give to students: the belief that, if they belong to a protected category, they have a right to four years of never being offended. What an extraordinary power to give to administrators and tribunals: the prerogative to punish the free speech and expression of people to whom they choose to assign the stains and guilt of historical oppression, while being free, themselves, to use whatever rhetoric they wish against the bearers of such stains. While the

world looks mainly at issues of curriculum and scholarship to analyze and evaluate American colleges and universities, it is the silencing and punishment of belief, expression, and individuality that ought to most concern those who care about what universities are and could be.

Despite the profound importance, symbolic and substantive, of speech codes, we should not view their presence or absence as the yardstick of freedom. Freedom dies in the heart and will before it dies in the law. Speech codes merely formalize the will to censor and to devalue liberty of thought and speech. Even without invoking codes, universities have found ways to silence or chill freedom of opinion and expression.

Supporters of free speech at colleges and universities become tarred by the sorts of speech they must defend if they wish to defend freedom in general. No one who defends trial by jury over popular justice in a murder trial is called a defender of murder; such a person is seen, by all, as a defender of trial by jury. The defender of free speech on American campuses, however, is forever being told that he or she is seeking, specifically, to make the campus safe for "racism," "sexism," or "homophobia." That is true if what one means is that the defender of free speech seeks to make the campus safe for the expression of all views, and for the clash of visions, ideas, and passions. At the time of McCarthy, many were intimidated into silence by the question "Why would you want to protect the speech of a Red if you are not a Red?" The issue, then and now, is not the protection of this or that person's rights by our subjective criteria of who deserves freedom but the protection of freedom itself.

What is popular speech in one time and place becomes unpopular in another. That is why none of us enjoys more freedom of speech than is accorded the least popular speaker.

Protection of free speech is not needed for inoffensive, popular speech with which all or most members of a community agree. Such speech is not threatened. Freedom is required precisely for unpopular speech, the toleration of which is one of the marks of a free society. What is popular speech in one time and place, of course, becomes unpopular in another. That is why, morally and practically, none of us enjoys more freedom of speech than is accorded the least popular speaker.

John Stuart Mill said it best. In *On Liberty* (1859), Mill noted that everyone claims to believe in freedom of expression, but everyone draws his or her own boundaries at the obviously worthless, dangerous, and wrong. Why should we tolerate speech that offends our sense of essential value, security, and truth?

To that question, Mill replied that there were four compelling reasons: 1) the opinion might be true, and "to deny this is to assume our own infallibility"; 2) the opinion, though erroneous, might—indeed, most probably would—"contain a portion of truth," and because prevailing opinion is rarely, if ever, the whole truth, censorship denies us that possible "remainder of the truth" that might be gained only by "the collision of adverse opinions"; 3) even if prevailing opinion were the whole truth, if it were not permitted to be "vigorously and earnestly contested," it would be believed by most people not because of "its rational grounds" but only "in the manner of a prejudice"; and 4) if we were not obliged to defend our belief, it would stand "in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct," becoming a formula repeated by rote, "inefficacious for good,...and preventing the growth of any real and heartfelt conviction, from reason or personal experience."

Mill also addressed the argument that even if one conceded these points, one could fairly insist that debate "be temperate, and...not pass the bounds of fair discussion." He noted that such "boundaries" are impossible to define objectively, and would be drawn by all in a manner favorable to themselves. If one took the notion of "temperate" and "fair discussion" seriously, Mill observed, what ought to be banned would be arguments that stigmatized one's opponents "as bad and immoral men." Indeed, he argued presciently, "With regard to what is commonly meant by intemperate discussion, namely invective, sarcasm, personality [ad hominem attacks], and the like, the denunciation of those weapons would deserve more sympathy if it were ever proposed to interdict them equally to both sides; but it is only desired to restrain the employment of them against the prevailing opinion."

Ultimately, Mill concluded, it should be left to public opinion, not to "law and authority," to determine "in whose mode of advocacy either want of candor, or malignity, bigotry, or intolerance of feeling manifest themselves." In short, it was "imperative that human beings should be free to form opinions, and to express their opinions without reserve." The struggle for liberty on American campuses is, in its essence, the struggle between Herbert Marcuse and John Stuart Mill.

Alan Charles Kors (akors@mail.sas.upenn.edu) is a professor of history at the University of Pennsylvania and editor-in-chief of Encyclopedia of the Enlightenment *(Oxford University Press). Harvey A. Silverglate (shadowu@world.std.com) is a criminal defense attorney, a civil liberties litigator, and a columnist for the* Boston Phoenix *and* The National Law Journal. *This article is adapted from their new book,* The Shadow University: The Betrayal of Liberty on America's Campuses *(The Free Press).*

Tax Reform Schools

If you think changing tax codes is tough in D.C., just try Albany, Annapolis, Atlanta, Austin...

BY JOHN HOOD

George Bush delivered a big tax cut, and conservatives pummeled him for it. No, not that George Bush. I'm talking about Texas Gov. George W. Bush, son of the former president and (for wont of anyone else with star quality) the putative front-runner in the 2000 GOP presidential field. Last year, after months of testy debate with state lawmakers, he engineered a $1 billion property tax cut. Even for Texas, the nation's second most populous state, that's hefty tax relief. Yet the governor's notices, particularly among Republican power brokers and D.C.-based conservative activists, were terrible.

Bush's bad reviews shed light on the political dynamics of the national tax reform debate that Steve Forbes kicked off during his 1996 presidential run. The experience in Texas reflects the obstacles that tax reform has

DAVID BROWN

Celebrate Christ's love with a unique gift of

The Nativity Cross

At its center, a stone from the birthplace of Jesus Christ!

Ricardo Montalban who introduced the Nativity Cross on television reveals its remarkable story...

"This is the Nativity Cross, the most unique cross in history. In 1963, renovations were made to the Cave of the Nativity in Bethlehem -- the recognized birthplace of Jesus Christ. The Mayor of Bethlehem approved the shipment of excavated Stones from the Cave to the United States, where they have been in safekeeping for many years.

Now you can share these sacred Stones through the Nativity Cross. My devout wish is that when you receive the Nativity Cross for yourself or to give to a loved one, it will help you draw closer to the only true answer in these uncertain times, our Lord Jesus Christ."

-- Ricardo Montalban

A Cherished Gift

What better way to share Christ's love than with a Nativity Stone that was present at His very birth. A gift every Christian would cherish, The Nativity Cross adds special significance to any occasion:

- **Christmas and Easter**, to celebrate His love for us
- **Birthdays**, as a joyous reminder of Christ's birth as well
- **Weddings**, as a loving exchange between bride & groom or a unique "thank you" for the wedding party
- **Anniversaries**, to celebrate love for each other in Christ
- **Baptism or Christening**, to celebrate the newborn's birth and that of the Lord
- **Mother's Day and Father's Day**, to thank them for your life
- **First Communion and Confirmation**, as a special reminder of commitment to Christ

The Nativity Cross is available in sterling silver with 22k gold finish star (shown), sterling silver, 22k gold finish, and 14k solid gold. Choose from two sizes: Classic (2" high) and Classic Small (1-3/8" high).

Each Cross comes beautifully gift boxed with a numbered Certificate of Authenticity plus a free video telling the story of the Nativity Stones.

This sacred heirloom will be cherished for generations to come. But remember, only a limited number of the Nativity Stones are available.

Please fill out and mail to: Nativity Stones, Dept. 2637, P.O. Box 4525, Pacoima, CA 91333

For fastest service on credit card orders, call 1-800-689-1058.

Item	Size	Price Each	Qty.	Total
Sterling w/22k gold star & silver chain	Classic	$105.00	____	____
Sterling w/22k gold star & silver chain	Classic Small	$87.00	____	____
Sterling cross and chain	Classic	$95.00	____	____
Sterling cross and chain	Classic Small	$79.00	____	____
14K solid gold cross & black satin cord	Classic	$295.00	____	____
14K solid gold cross & black satin cord	Classic Small	$179.00	____	____
22K gold finish cross and chain	Classic	$59.95	____	____
22K gold finish cross and chain	Classic Small	$59.95	____	____
	Subtotal			____
Rush delivery available	CA residents, add 8.25% sales tax			____
for $12 extra.	Shipping, any quantity			$9.95
	Total			____

Name _____

Address _____

City _____

State/Zip _____

Phone _____

[ ] Visa [ ] MasterCard [ ] AmEx [ ] Discover

[ ] Check enclosed payable to Nativity Cross

Acct. # _____ Exp. Date _____

Signature _____

A portion of the proceeds is donated to support the maintenance of the Cave of the Nativity.

RE1198

Satisfaction guaranteed or return within 30 days for a refund of the purchase price.

encountered in state capitals across the country. This year, tax cuts totaling $4 billion to $5 billion have been or will be considered in about 35 states. But tax reform has yet to gain any ground, and in many ways state and local tax codes are moving further from the neutrality, simplicity, and equality that reformers seek. The main problem is that fundamental tax reform inevitably means higher taxes for some. In a war between those seeking tax cuts and those protecting themselves from tax hikes, the latter will almost always win. To get past this obstacle, reformers may have to scale back their immediate goals.

The push for reform in Texas began with a tax system widely perceived as out of whack. Texas is one of five states without an individual or corporate income tax. The average state derives 40 percent of its revenue from income taxes, a third from sales taxes, and the remainder from levies such as business licenses and gasoline taxes. Texas, by contrast, gets half of its revenue from a sales tax, and it relies more than most states on local property taxes to pay for public education and other services. Its sales tax rate (6.25 percent) and its property tax burden are correspondingly high.

Lacking a corporate income tax, Texas imposes a disproportionate share of its business tax burden on capital-intensive industries, such as manufacturing, oil refining, and mining, that own a lot of taxable real property. According to a study by the governor's office, in 1997 the average property tax in the capital-intensive segment of Texas business was $5,300 per employee, compared to $595 per employee in labor-intensive businesses. "The bottom line is that the Texas economy has changed rather dramatically since the current structure was put into place," Austin attorney and tax reform activist Chris Shields told the *Austin Business Journal* in January of last year. "Asset-backed companies represent one-third of the economy but pay two-thirds of the school property taxes."

Elected governor in 1994, Bush started talking about the Texas tax code the day after the 1995 legislative session adjourned. The legislature had just adopted all four of Bush's key campaign promises: tougher juvenile justice laws, tort reform, welfare reform, and local control of schools. The governor was on a roll, and he decided to push on, into the tax thicket. Ruling out the adoption of income taxes, Bush put together a blue-ribbon panel to study ways to reduce property taxes and reform the financing of public schools.

In January 1997, Bush was ready to release his plan. It had four major components: 1) a big cut in school property tax rates in each of the state's 1,044 school districts; 2) a five-fold increase in the property tax homestead exemption, to $25,000 per home; 3) a half-cent increase in the motor vehicle tax and the statewide sales tax; and 4) a new 1.25 percent "business activity" tax to replace the state's franchise and property taxes on business. It would have applied only to companies with at least $500,000 in sales.

Overall, Bush's plan offered property-tax payers a projected $2.8 billion cut the first year and $6 billion over the budget biennium, translating into a 40 percent reduction of the average homeowner's tax bill as well as significant tax savings for businesses with lots of taxable property or inventories. All but about $1 billion of the initial tax relief, however, was offset by the increased tax rates on retail sales and motor vehicles and increased taxes on some service-sector businesses. In addition, the Bush plan would have shifted the main responsibility for funding schools to the state.

Fundamental tax reform inevitably means higher taxes for some. In a war between those seeking tax cuts and those protecting themselves from tax hikes, the latter will almost always win. To get past this obstacle, reformers may have to scale back their immediate goals.

One can quibble with the details of Bush's plan. I wouldn't have structured it the way he did. But its fate at the hands of special interest lobbies in Austin should serve as a cautionary tale for flat taxers and sales taxers at the national level.

Keep in mind that Bush did a lot of things right. His plan offered a large net tax cut. And soon after announcing it in his 1997 State of the State address, the governor embarked on a speaking tour around Texas, generating significant public interest and media attention. The details of the plan were widely reported. For the first few weeks, both Democrats and Republicans in the state legislature were cautiously optimistic about the plan's prospects. But one prescient business lobbyist told the *Abilene Reporter-News* that Bush's pitch wasn't going to be easy. "I think tax reform is not a hard sell," he said. "But specific tax reform is a hard sell. The closer you get to specifics, the harder it becomes."

The state's business community quickly took sides. The Coalition for Property Tax Reform and trade associations for manufacturers, oil and gas companies, farmers, and ranchers all applauded the plan. Small-business groups, even those in retail and service industries, also liked the plan because of the $500,000 standard deduction from the new business activity tax. On the other hand, the Texas Retailers Association, the Texas Restaurant Association, and state associations of doctors, lawyers, and other professionals organized as partnerships announced their opposition. Some of these firms would have been subject to significant state taxation for the first time.

Another aspect of the new business activity tax that

AP / WIDE WORLD PHOTOS

George W. Bush: "An attorney might say that he shouldn't have to pay tax" for the legal services he dispenses, he said. "I say, why?" To exempt service industries from taxation, he continued, makes no sense in a modern economy.

sparked opposition was the proposal to count employee compensation, including nonwage benefits and payroll taxes, as part of the tax base. Critics argued that taxing fringe benefits would reduce the likelihood that employers would offer them, and that imposing a state tax on Social Security, Medicare, and unemployment insurance contributions amounted to double taxation (of course, this already happens with the employee share of payroll taxes, which is included in a worker's income tax base).

To his credit, Bush attempted to defend his tax reform plan on the basis of treating taxpayers equally and minimizing state distortion of the economy. At an appearance in Amarillo in early February 1997, he was peppered with questions from doctors and lawyers. "An attorney might say that he shouldn't have to pay tax" for the legal services he dispenses, Bush said. "I say, why?" To exempt service industries from taxation, he continued, makes no sense in a modern economy where traditional manufacturing and extractive industries make up a smaller share of output.

This is a critical point. Most of what state governments do today—funding schools and colleges, for example, or paying for Medicaid and other social services—theoretically benefits taxpayers regardless of how much property they own. If taxes are designed as rough user fees, to be imposed according to a "benefit principle" that aims at neutrality and tries to minimize cross-subsidies, then these services (if provided by government at all) aren't properly funded by archaic property or franchise taxes that don't spread the burden equally. On the other hand, such functions as law enforcement and transportation especially benefit those with lots of land or expensive property and thus might still reasonably be supported by property taxes.

The governor made another point about neutrality. He noted that under the current Texas tax code, corporations are forced to pay extra taxes that partnerships and other business entities don't. "In today's world," Bush said, "multimillion-dollar partnerships compete for business with corporations, yet they escape tax liability." Income earned by corporations is often taxed two, three, or more times as it flows from the business to stockholders and eventually to their heirs. Income earned by other business forms usually is taxed only once or twice.

Two companies demonstrate the uneven impact that Bush's plan would have had. Southwestern Public Service Co., an electric utility, estimated that Bush's plan would cut its property tax liability by $4.2 million. On the other hand, Amarillo-based Wonderland Amusement Park projected a 27 percent increase in taxes. "A labor-intensive business, such as we are, will have a lot of problems with the proposals," said Wonderland President Paul Borchardt shortly after Bush announced his plan.

That was putting it mildly. By the time the state legislature started working on the plan, Bush's business activity tax was already doomed. As the proposal worked its way through the legislative meat grinder, both chambers rewrote it. The majority-Democrat Texas House passed an even higher property tax cut than Bush had proposed but also approved more offsetting tax increases, including an attempt to widen the state sales tax base to include some services (Texas, like most states, has a narrow sales tax base that excludes most services and thus taxes lower-income families disproportionately). The Senate, with a 17–14 Republican majority, voted down this package. With the state GOP chairman criticizing Bush's approach as anti-business and pro-tax, the Senate fashioned its own plan, including smaller property tax cuts and little reform. Other ideas, such as extending the state franchise tax to partnerships and raising

taxes on insurance premiums, were also floated.

Differences between the two chambers, the governor, and lobbyists for professionals and business interests led to stalemate by late May. With only days left in the 1997 legislative session, Bush and lawmakers settled for just one element of the governor's original plan: a constitutional amendment to increase the homestead exemption. Texas voters overwhelmingly approved the $1 billion tax cut amendment in a referendum two months later.

Again, I don't want to suggest that Bush's solution to the Texas tax morass was necessarily the best one. Some might argue against a shift of responsibility for school financing from local governments to the state (I happen to think that's a good idea). Others might question the wisdom of enacting what amounts to a value-added business tax and widening the tax base, both of which create the risk of government growth in future years because of the increased revenue that a relatively small rate hike can yield.

These concerns aside, however, the Texas experience illustrated virtually every political barrier that a flat tax or national sales tax would confront in Washington. Insurers and other providers of employee benefits went ballistic over Bush's proposal to tax nonwage compensation. Lawyers, doctors, and other professionals lobbied strenuously to keep their industries from being subjected to a new tax. Fiscal conservatives opposed the plan, despite the fact that it represented a net tax cut, because it raised rates in some areas and on some industries. Bush got awful national press in conservative media outlets such as *The Wall Street Journal*, which zeroed in on the part of the package that raised rates rather than recognizing it as a serious, albeit flawed, attempt to reform an outdated, complicated, and economically distorting tax system.

The fact is that sweeping tax reform would raise taxes on some individuals and companies. A flat tax would, and so would a national sales tax. Furthermore, both increase the potential revenue from future tax rate hikes by widening the tax base. Despite the differences in detail, if Bush's plan wouldn't fly in Austin, fundamental tax reform as currently envisioned won't fly in Washington, especially once a Republican Congress starts reading the fine print and getting phone calls and letters from irate doctors and insurance agents.

There's yet another reason to rethink the viability of comprehensive tax reform. Business lobbies have increasingly been abandoning any philosophical commitment they might once have had to a neutral tax code in favor of targeted breaks for specific industries or particular companies. These provisions, known as "economic incentives," are punching holes in state tax codes across the country and souring ordinary voters on the tax reform process.

Auto manufacturers such as Mercedes-Benz and BMW receive multimillion-dollar tax breaks to locate in Southeastern states. New York, New Jersey, and Connecticut play property tax tag with corporate headquarters. In August 1993, Illinois Gov. Jim Edgar helped put together a resolution against state relocation subsidies for corporations that was adopted by the National Governors' Association. Just before Edgar left Springfield for the NGA meeting to announce the truce, he approved an incentive deal with Tootsie Roll Industries that included $1.4 million in state and local tax exemptions. Right after he returned from the NGA meeting, Edgar offered a $30 million tax incentive package to woo a Nabisco plant.

As Edgar's behavior suggests, interstate agreements on corporate tax loopholes are about as effective as international agreements on arms. The incentive to cheat is high. Since the well-publicized multistate rivalry for new Nissan and Saturn auto plants in the mid-1980s, almost every state has offered or given special tax breaks, enacted general tax-incentive policies such as per-job corporate tax credits or enterprise zones, or both. Rather than moving in the direction of flatter, fairer, more neutral tax codes, states and localities are sprinting as hard as they can in the opposite direction.

Rather than moving in the direction of flatter, fairer, more neutral tax codes, states are sprinting as hard as they can in the opposite direction. Often, the state codes are worse than the federal one. The federal code has four income tax brackets. Of the 44 states with individual income taxes, 18 have five or more brackets.

Indeed, in some ways state tax codes are worse than the national system. The federal code has four income tax brackets. Of the 44 states with individual income taxes, 18 have five or more brackets, including Iowa and Ohio with nine and Missouri and Montana with 10. Some states have more than one corporate income tax bracket, not including the credits and exemptions that in effect create many more tax rates. States with retail sales taxes almost invariably exempt services from the tax base, and many have lower or no taxes on the retail sale of food, drugs, and other "necessities."

My own experience in North Carolina has been sobering. As much as business leaders in my state say they would like to see the overall corporate tax rate lowered, they spend far more time and money seeking incentive packages for specific companies (most recently for FedEx and Nucor Corp., both longtime heroes of free marketeers), along with general policies giving tax breaks to companies that locate in particular counties, pay certain minimum wages, and otherwise do what state politicians

want them to do. This form of industrial policy should disturb anyone committed to tax reform or free enterprise.

The fact that there are political barriers to tax reform does not mean the cause is doomed. Rather, reformers will need to design discrete, incremental policies that are consistent with the principles of tax neutrality and simplicity yet salable to lawmakers and voters.

The fact that there are political barriers to tax reform does not mean the cause is doomed. Rather, reformers will need to design discrete, incremental policies that are consistent with the principles of tax neutrality and simplicity yet salable to lawmakers and voters.

A good example is the reduction or elimination of taxes on cars. Jim Gilmore got elected governor of Virginia last year largely on this issue. Other sitting and would-be governors are following suit. In states where most or all car taxes go to dedicated highway funds, the issue is muddy at best, demagogic at worst. But in many states, money from property or use taxes on automobiles goes to the general fund, thus imposing an unjustified special tax on a single product. In these jurisdictions, eliminating car taxes, as well as special excise taxes on cigarettes and liquor, is both a popular campaign issue and a step toward neutrality.

Another example of incremental reform is giving the self-employed and those who work for small businesses the same tax breaks on their health insurance that people who get employer-provided coverage already enjoy. We had some success with this issue in North Carolina. In April, the state legislature passed a $65 million tax credit for families that buy health insurance for their kids. Lawmakers were persuaded that to do less was to continue to give breaks worth more than $1,000 per child in federal and state taxes to relatively affluent white-collar employees while denying them to self-employed plumbers and retail clerks. U.S. Rep. Bill Archer (R-Texas), chairman of the House Ways and Means Committee, has proposed a similar health care credit at the federal level. This change, of course, does not eliminate the special exemption for medical insurance; it just spreads the exemption more evenly across the population. But because it eliminates a bias in the tax base, it is consistent with tax reform.

Yet another step at the federal and state level would be creating and expanding tax-free savings accounts for medical care, education, unemployment compensation, and perhaps other purposes. Since the tax-reform argument for these policies is often misunderstood, let me explain a bit. First of all, a cardinal rule of neutral taxation is to stop punishing savings. For nonretirement accounts, we violate this rule by double-, triple-, or quadruple-taxing investment income, particularly that from corporate stocks. Taxing all forms of income or consumption only once means exempting either the principal or the earnings. Either a "front-ended" savings account that exempts deposits but taxes withdrawals or a "back-ended" account that taxes deposits but exempts withdrawals is consistent with tax neutrality.

For medical savings accounts, not just the deposits but also the withdrawals should be tax-free. That's because the current tax system makes health care consumption via insurance completely tax-free: Neither the premiums you pay insurers nor the services you receive are considered taxable income. Tax neutrality demands that medical savings, as an alternative to insurance, receive the same tax treatment.

The argument for tax-exempt educational savings accounts is a bit different. Education isn't just an alternative way to consume one's income. Often, it is an investment in skills and credentials that will yield a future return in higher (and taxable) wages. Just as the purchase of machinery or equipment should be tax-deductible, because it generates future taxable income, so should some training and education expenses paid by employers or employees. An educational savings account into which you can deposit several thousand dollars a year tax-free, and from which you can withdraw unlimited amounts tax-free, is defensible on tax policy grounds (as well as being an attractive means of enabling families to exercise school choice without the regulatory problems that vouchers might bring).

Other possible reforms include making payroll taxes deductible from income taxes (a must if Social Security privatization becomes feasible) and expanding the lower income tax brackets so more taxpayers pay the same rate (thus reducing the revenue loss from a subsequent elimination of the higher rates). The key is to pick ideas that generate strong political constituencies of their own while avoiding the mistake of raising taxes on other powerful constituencies.

Tax cutters fall along a continuum, from pure flat taxers and national sales taxers to corporate types who lobby for special rates, credits, and exemptions. Successful tax reformers will chart a middle course between these two poles, finding ways to promote ambitious ends through targeted means. As Bush discovered, how tax reform will be greeted by lobbies and perceived by voters is just as important as its theoretical underpinnings.

Contributing Editor John Hood (locke@interpath.com) is president of the John Locke Foundation, a state policy think tank based in Raleigh, North Carolina.

They Say Sex Gets Better With Age. *It's True!*

Men and women past 40 have the opportunity to enjoy "the best sex of their lives." But every opportunity has its problems. Older loving couples must overcome years of making love "the same old way."

Inhibitions are harder to shake off. Good communication becomes more critical than ever. Arousal often needs mutual participation. But, all in all, lovemaking can still be the most joyous and wonderful part of our lives, at any age.

The Couples Guide To Great Sex Over 40 shows us how to put the fun back into lovemaking. This two-volume video set teaches us not to be satisfied with "going through the motions" but to aim for new sexual heights most of us only dream about.

A noted urologist and prominent sex therapist introduce four real couples who show how to overcome inhibitions and make sex fun again. They begin with the basics – intimacy, gentleness, and good communication.

These brand new videos are based on sound medical research and suggestions from family doctors, gynecologists, psychologists, and sex therapists.

We must warn you, however, that these tapes are explicit. Each technique is not just talked about but demonstrated. Each lesson is shown, in detail, to be watched and discussed by both partners together.

Who orders *The Couples Guide To Great Sex Over 40?* Couples seeking to restore the sense of excitement they had when they first met. People who want to build confidence to consummate a new relationship. Those with back and heart problems or erectile difficulties. Mature couples desiring to rekindle the passion of their younger days.

FREE VIDEO OFFER

For a limited time, purchasers of either volume of *The Couples Guide To Great Sex Over 40* will receive a FREE 37 minute video on how to improve Sexual Communication and Intimacy.

Sinclair
VIDEO LIBRARY

www.bettersex.com

Plain Packaging Protects Your Privacy ✈ ***Express Delivery Available***

For fastest service with credit card orders
Call Toll Free 1-800-955-0888 Ext. 8RM5 (24 Hrs /7 Days)

SPECIAL OFFER! Reg. $34.95 Now only $24.95

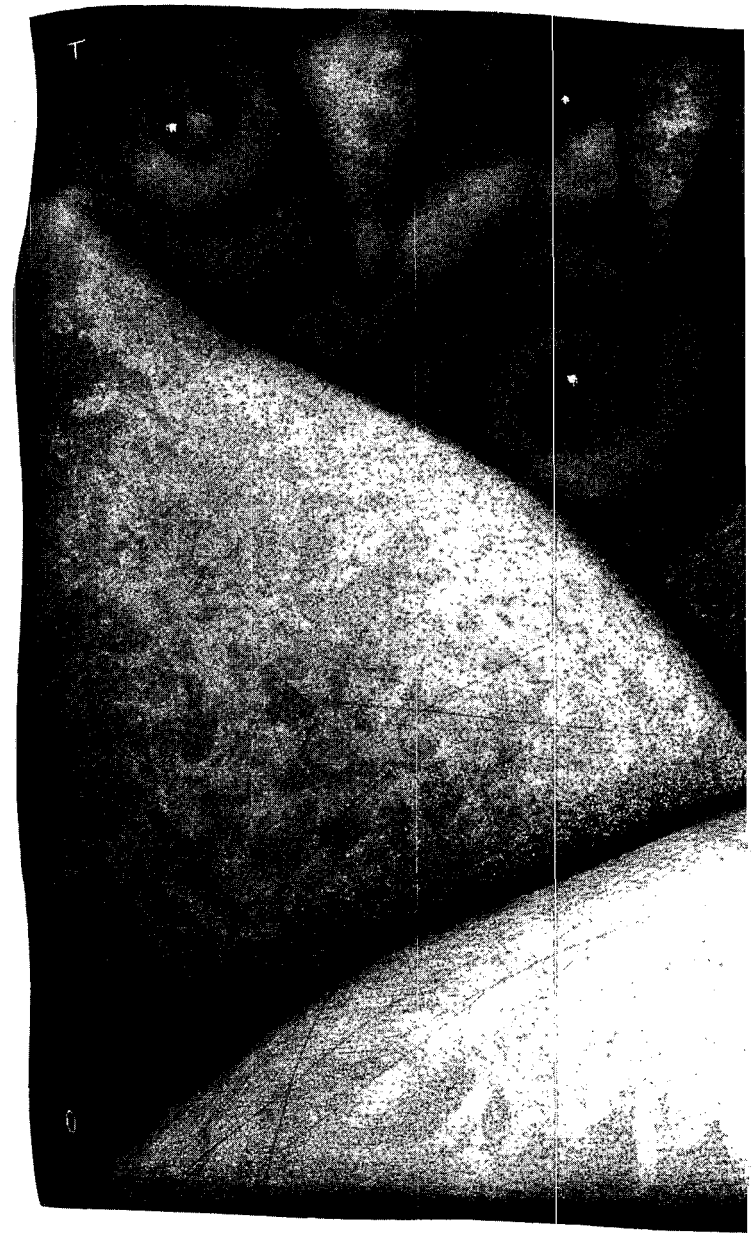
	REG.	NOW
❒ THE COUPLES GUIDE TO GREAT SEX VOL. 1 (ADDING SPICE TO SEX OVER 40) (#1108) 60 MIN.	~~$34.95~~	$24.95
❒ THE COUPLES GUIDE TO GREAT SEX VOL. 2 (THE MIND BODY CONNECTION) (#1109) 60 MIN.	~~$34.95~~	$24.95
❒ BUY BOTH VOLUMES (#1110) SAVE $10!	~~$49.90~~	$39.90
❒ SEXUAL INTIMACY VIDEO (#6444) with purchase		FREE!
POSTAGE & HANDLING		$ 4.00
Total		$____

NAME (PLEASE PRINT) _____
(I CERTIFY THAT I AM OVER AGE 18)
STREET ADDRESS _____
CITY STATE ZIP _____
PLEASE INDICATE YOUR PAYMENT METHOD:
❒ CHECK OR MONEY ORDER ENCLOSED FOR $ _____
❒ VISA ❒ MC ❒ AMEX CARD # _____
SIGNATURE _____ EXP. DATE _____

CALL TOLL FREE **1-800-955-0888 Ext. 8RM5** (24 HRS/ 7 DAYS) OR MAIL TO:
THE SINCLAIR INSTITUTE, DEPT. 8RM5, BOX 8865, CHAPEL HILL, NC 27515

CALL 1-888-736-2247 FOR DEALER ORDERS ONLY. (NC ORDERS PLEASE ADD 6% SALES TAX. CANADIAN ORDERS ADD US $5.00 SHIPPING)

DARWIN AND DICKENS

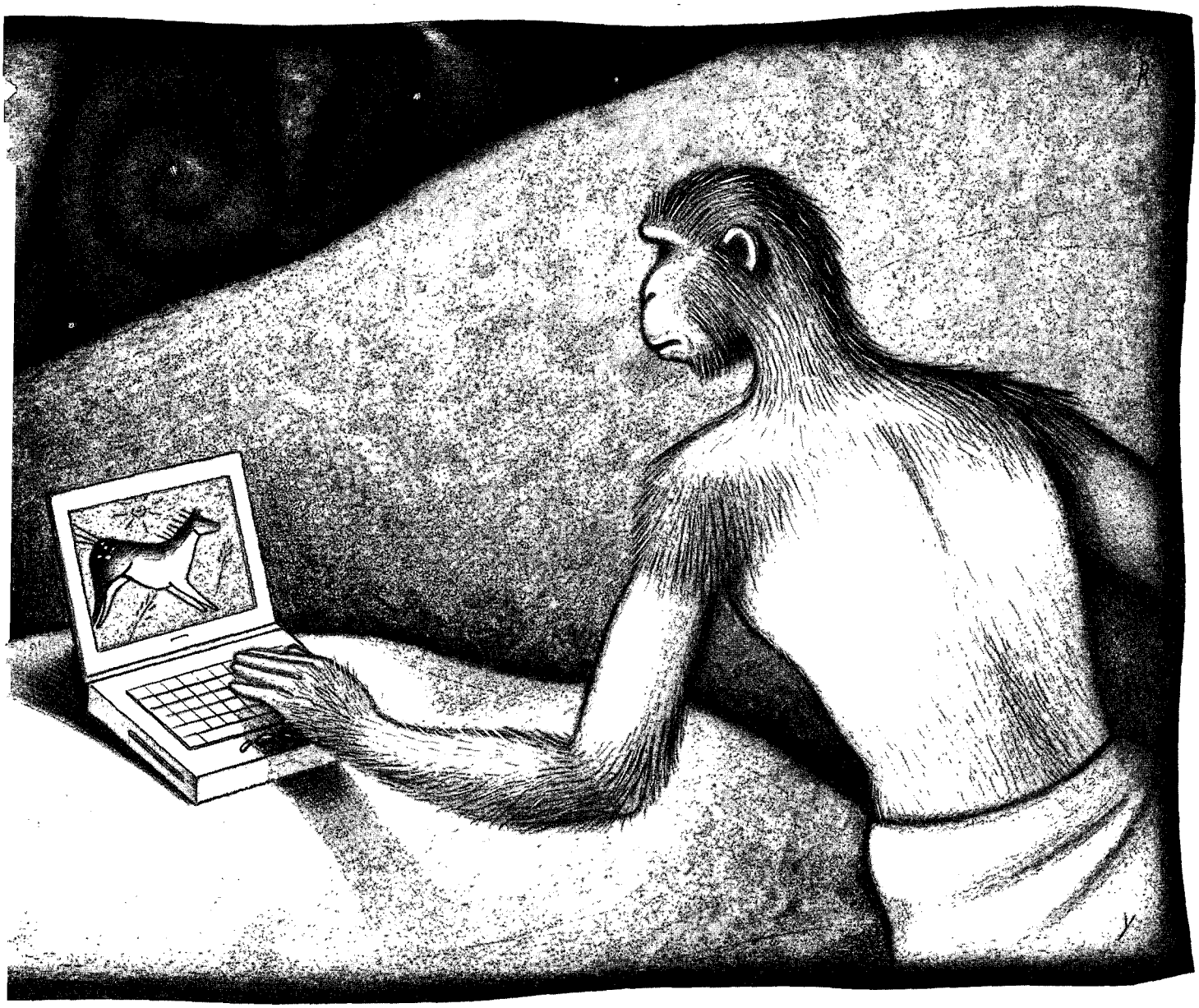


A new breed of literary critics is using evolution to explain literature—and to challenge intellectual orthodoxy.

By Nick Gillespie

Flip to pages 160 and 161 of the recent book with the tongue-tying, brain-busting title *Mimesis and the Human Animal: On the Biogenetic Foundations of Literary Representation*, and you will find something unprecedented in the annals of literary criticism: scientific line drawings of the "relaxed open-mouth display of [the] crab-eating monkey" and a diagram tracing the "phylogenetic development of laughter and smiling" in primitive mammals, chimpanzees, and human beings. *Mimesis and the Human Animal*, written by Temple University English professor Robert Storey, is not, mind you, an explication of Pierre Boulle's 1963 novel

ILLUSTRATIONS: TROY THOMAS



Planet of the Apes; nor is it an au courant cultural studies analysis of the *Curious George* children's series. Rather, Storey's book seeks to answer no less traditional a question than, "What does it mean to say that art imitates life?"

The casual reader—or even the seasoned literary scholar—can be excused for being disoriented by the monkey pictures: Just what on earth could a crab-eating monkey (or even one that preferred lobster) possibly have to do with Shakespeare and *The Scarlet Letter*? What could "relaxed open-mouth displays" possibly have to do with Milton and *Moby-Dick*?

Plenty, it turns out. Or at least that's the case spelled out in *Mimesis and the Human Animal*'s densely argued and heavily footnoted 274 pages. Storey contends that literary critics need to "take seriously the implications of human evolution" for their field. Human society, he argues, "exfoliates from human biology," and his book attempts to parse the "biogrammar," or underlying range and rules, of a culture underwritten by evolutionary "strategies of survival." Forget about William Carlos Williams's famous modernist red wheelbarrow, goes this line of thinking. So much *more* depends on the relaxed open-mouth display of that crab-eating monkey.

Storey is one of a growing number of scholars linking

literary studies with recent and ongoing developments in evolutionary theory. (In the interest of full disclosure, I should note that I am a former graduate student of Storey's and am mentioned in the acknowledgments of his book.) Over the past decade or so, such efforts have become numerous and widespread enough to suggest, in his tentative phrase, "something very like a 'movement.'" Though such scholars take various approaches and have important differences with one another, all agree, as Storey parsimoniously puts it, that "biology counts."

In *Evolution and Literary Theory* (1995), Joseph Carroll, an English professor at the University of Missouri at Kansas City, argues that "knowledge is a biological phenomenon, that literature is a form of knowledge, and that literature is thus itself a biological phenomenon." In *Reading Minds: The Study of English in an Age of Cognitive Science* (1991), University of Maryland English professor Mark Turner analyzes "acts of language, including literature, as acts of a human brain in a human environment which that brain must make intelligible if it is to survive."

In *Natural Classicism* (originally published in 1985 and reissued in 1992), REASON contributing editor and University of Texas at Dallas English professor Frederick Turner (no relation to Mark Turner) links recurrent, cross-cultural rhyme and meter patterns to specific structures in the human brain; more recently, in *The Culture of Hope* (1995), he writes of a "camp" of artists and critics inspired by the recognition "that evolution—a concept now extended by scientists to cover not just biology but the whole of the physical universe—is productive of novel forms of order." In *A Blessed Rage for Order: Deconstruction, Evolution, and Chaos* (1991) Turner's U.T.-Dallas colleague Alexander J. Argyros synthesizes aspects of E.O. Wilson's foundational text *Sociobiology* with the "emerging science of chaos" to lay out a "new understanding of art." Anthropologist Ellen Dissanayake has authored two wider-ranging forays into general artistic activity, *What Is Art For?* (1988) and *Homo Aestheticus: Where Art Comes From and Why* (1992). Further attempts to create an evolutionary-based or influenced criticism have been outlined by another half-dozen or so people.

The burgeoning interest in evolution's intersection with culture has implications far beyond the somewhat cramped confines accorded literature within the ivory tower. This sort of criticism represents the most thoroughgoing assault on the powerful intellectual orthodoxy that University of California at Berkeley English professor Frederick Crews has dubbed "the Poststructuralist Vanguard"—those "cutting edge" schools of thought in the humanities and social sciences that emphasize the "social construction" of reality.

The pairing of evolution and literature seems likely to produce a Frankenstein monster: freakish at best (*The Naked Ape* meets *The Hairy Ape*), disturbing at worst (*The Bell Curve* meets *The Bell Jar*). But the work produced so far is interesting and engaging, offering fresh readings of classics and pointing to new areas worth investigating.

Such ideas—along with the poststructuralist penchant for using "moral intimidation" to cow dissenters—have proven intellectually corrosive, says Crews. Though simpatico with poststructuralists' politics, he is disturbed by the substitution of utopian fantasies for a "willingness to face up to the best available knowledge of our world." "Real harm is being done," he writes, "to the cause of empirical rationality, which has been tacitly devalued by many poststructuralists and explicitly condemned as oppressive by some others."

In the longstanding nature-nurture debate, poststructuralists stake out a position that's basically off the scale: Not only is all human behavior an artifact of environment, "nature" itself is a wholly ideological construct, a mystifying abstraction invoked to justify the status quo or some inevitably retrograde social arrangement. By championing the scientific method, rational analysis, and the idea that there is something approaching an objective, knowable reality—concepts derided by poststructuralists as tools of repression and self-deluding bourgeois ideology—the evolutionary critics may well help replace a generally unexamined belief in the supremacy of environmental conditioning with a more nuanced appreciation for how genetic and environmental factors affect human activity, including the art we produce and consume.

Evolutionary Readings

On the face of it, the pairing of evolution and literature seems likely to produce some sort of Frankenstein monster: freakish at best (*The Naked Ape* meets *The Hairy Ape*) and disturbing at worst (*The Bell Curve* meets *The Bell Jar*). Yet much of the work produced so far is interesting and engaging, offering alternative readings of established literary works and pointing to new areas worth investigating.

The core concept of Darwinian evolution is that life—plant and animal, insect and human—struggles to adapt to its environment. Life forms that adapt successfully flourish; those that don't perish. Over millions of years, this process of reward and punishment has led to tremendous variation both within species (certain beaks work better for certain birds in certain environments) and among species (it doesn't pay for us all to be

Smile when you say that, Chim-Chim: If Darwin was right, ask a growing number of literary scholars, what are the implications for their field? Evolutionary critics argue that behaviors in primates such as the "fear grin" of the rhesus macaque (left) and the "relaxed open-mouth display" of the crab-eating monkey (right)—and their counterparts in human beings—can shed light on how art is created, consumed, and interpreted.

From Robert A. Hinde, *Individuals, Relationships, and Culture*. Reprinted by permission of Cambridge University Press.

birds). Where early evolutionary theorists often posited human beings as the "highest" achievement of evolution, contemporary theorists stress instead the proliferation of adaptive strategies and life forms. Evolution is recognized as a process with no particular end point; indeed, it's conceived as something like a relentless diversity machine (albeit one with dire results for most new variations).

According to evolutionary theory, there are all sorts of "proximate," or immediate, causes of behavior, but the ultimate cause of activity is an attempt to maximize reproductive success, to keep on keeping on, either at the level of individual organisms or at the level of genes themselves. Millennia of such attempts have left their marks on all life forms, including humans: We have inherited all sorts of physical and mental structures (color vision, distinct genitalia for men and women, emotions, etc.) and predispositions to certain types of behaviors (forming groups, caring for infants, creating rituals, etc.) that somehow paid off in the past. Far from being a tabula rasa that can be wiped clean and rewritten time and again, humans are born with certain constraints, tendencies, and proclivities that, in combination with environmental factors, determine behavior.

In *Taking Darwin Seriously* (1986), the philosopher of science Michael Ruse writes, "Two tigers were seen going into [a] cave. Only one came out. Is the cave now safe? Again: you have to travel across a plain to get to your hunting grounds. You can only walk a limited distance in this heat. Should you set off now? Should you wait until tomorrow? Should you plan to camp out for the night?...The proto-human who had...[a] disposition to take seriously the law of the excluded middle, and who avoided contradictions, survived and reproduced better than he/she who did not." For better or worse, argue the evolutionary critics, we are descendants of that savvy proto-human. And like all heirs, we have inherited traits—good, bad, and indifferent—from long-dead ancestors.

Joseph Carroll provides perhaps the most clear-cut example of how such insights can be used in literary criticism. Noting that evolution does not mean that "all organisms, and especially not all human organisms, are directly seeking to maximize their reproductive success," it "does imply that all innate human psychological structures have...evolved under the regulative power of reproductive success and that these innate structures remain fully active at the present time." For Carroll, the "single most important corollary of this principle, for the purposes of literary analysis, is that reproductive success, in its twin aspects of sexual union and the production of successful offspring, is central to human concerns and thus to literary works." The hunt is on, in other words, to see how "strategies" of "reproductive success" play out in literary texts—or to tally the costs of repressing the same.

Carroll's reading of Emily Brontë's *Wuthering Heights* proceeds from such assumptions: He notes that the story of the tempestuous relationship between the foundling Heathcliff and Catherine Linton (née Earnshaw), who are raised as brother and sister, is usually discussed as a "conflict between unregulated, demonic sexual passion and tamely civilized behavior." Critics typically explicate *Wuthering Heights* in terms of Heathcliff and Catherine's struggle with their quasi-incestuous desires. Such a Freudian focus, argues Carroll, "erroneously" imports incest into a text where it is not a central issue (he cites *Hamlet* as a similar instance of critical malfeasance). Instead, Carroll argues that something else is at work.

Drawing on current ethological research, Carroll documents that boys and girls who are raised as siblings, even if they are not related, are "genetically programmed" to find sexual relations distasteful. Given that, he writes, "we can conjecture that Heathcliff and Catherine...raised as brother and sister, are not engaged in a primarily sexual liaison as adults, that the relationship is essentially regressive, motivated by an appeal to childhood....The violent and histrionic displays in which both Heathcliff and Cathy engage would be seen not as Byronic sexual displays but rather as infantile tantrums pathologically (and lethally) affiliated with adult power." Drawing on biographical detail, Carroll concludes that *Wuthering Heights* is a "projective representation of Emily Brontë's overly enmeshed (but not incestuous) relationship with her alcoholic brother Branwell."

Carroll's approach is basically traditionalist in terms of subject

matter (a classic novel) and method (a thematic reading, authorial biography). That approach hardly exhausts the possibilities of evolutionary criticism, either in topic or temperament. In *Mimesis and the Human Animal,* for instance, Storey draws on all manner of literary texts —old and new, high and low, lasting and ephemeral. He discusses the characters Volpone, Sgt. Bilko, and Lex Luthor in a single sentence; references to the Spanish Golden Age drama *Celestina* rub up against mentions of the sitcom *Cheers.* While Carroll's introduction to *Evolutionary and Literary Theory* is a decorous (though full-scale) assault on poststructural thought, Storey comes out swinging in a "Pugnacious Preface" that features the Brechtian epigraph, "Why should we still want to be so clever when at long last we have a chance of being a little less stupid?"

For poststructuralists, science and the rational analysis it attempts are not qualitatively different from other sources of knowledge. Contrary to its grand claims to "universal" truth, science is merely one subjective form among others. And like any other system, it only makes sense within its own set of self-confirming rules.

Where Does Comedy Come From?

Storey explicates the biological underpinnings of the tragic and comic genres. Discussing the latter, Storey "approach[es] laughter and smiling—universal reactions of human beings to specifiable classes of stimuli—as *evolved* responses of an apparently adaptive kind." This is where the crab-eating monkey and relaxed open-mouth displays come into play: Laughter and smiling and their flip sides, anger and crying, turn out to have common roots in the mammalian fight-or-flight response to ambiguous circumstances. Any sudden, startling, or incongruous situation, Storey explains, may lead to laughter and smiling, or if it's deemed dangerous, to avoidance, anger, and tears.

What's common to "laugh-inducing situations" across cultures, he writes, is the presence of a "masterable discrepancy." If you can resolve a difficult or foreboding situation, you're likely to laugh, smile, or feel relief. Such is the evolutionary basis, argues Storey, for the comic genre. Make the situation *un*masterable, and one moves into the realm of tragedy, with all its fear, trembling, and pathos. He further notes that the common biological basis for both genres helps explain why it is often difficult to draw a bright line between the two.

Where Carroll and Storey spend much of their time explicating specific works of literature, Alexander Argyros suggests a third way of doing evolutionary criticism. His *A Blessed Rage for Order* scarcely mentions literary works per se, save for the title's allusion to a Wallace Stevens poem. Instead, Argyros is more interested in the sort of theoretical and philosophical expositions about writing that characterize much poststructuralist criticism and contemporary literary "theory." While all the evolutionary critics engage poststructuralism at length, Argyros seems more sympathetic to it than most; he spends the first third of the book in an affectionate, if relentless, critique of the thought of Jacques Derrida, the Big Kahuna of deconstruction.

Argyros also moves beyond biological evolution to discuss wider-ranging and far more speculative matters: "Recent developments in a congeries of different disciplines, ranging from high-energy physics to biogenetic anthropology, suggest the contours of a stunningly beautiful model of cosmic evolution," he writes, drawing heavily on chaos theory. "Rather than a flat web of traces, the universe appears to be a marvelously complex, and frequently tangled, dynamical hierarchical system." The interest in different forms of evolution leads him ultimately to suggest that art is "simply the result of [an] incongruity between a rapidly evolving cultural world and our evolutionary heritage."

From such a point, Argyros develops a theory about the function of storytelling, its larger social purpose, and its apparent universal appeal. The creation and interpretation of literature, he argues, participate in creating a "gene-culture coevolution, a positive feedback system" in which genes generate basic rules for culture and "cultural practice creates selective pressure for the survival of certain genes." Since "literature is a model through which factual and counterfactual possibilities may be staged," he says, it gives "human societies...the capacity to identify and rank possibilities." The imagined worlds created through all forms of storytelling, then, are means through which individuals and societies envision and move toward their futures.

From Science to Subversion

To appreciate fully how different evolutionary approaches to literatures are, one needs to understand a few things about contemporary literary studies, particularly poststructuralist assumptions about science. As Frederick Crews has accurately put it, poststructuralism, a set of related ideas associated with figures such as Jacques Derrida, Michel Foucault, and Roland Barthes, "has been all but officially recognized as the new academic establishment." Its assumptions writes Crews, are often "treated as self-evidently valid." If poststructuralism does not quite constitute an express "flight from science and reason" (as the title

of a recent anti-poststructuralist collection would have it), it certainly travels in that general direction.

As its name suggests, poststructuralism was born out of "structuralism," a school of thought identified with French anthropologist Claude Lévi-Strauss that achieved prominence in the humanities and social sciences in the 1950s and '60s. Structuralism was based on the search for deep, underlying similarities in cultural phenomena, including myth, art, and literature. After identifying analogous "structural" relationships (or "isomorphisms"), the structuralist could then compare apparently different objects of study and tease out larger, deeper meanings.

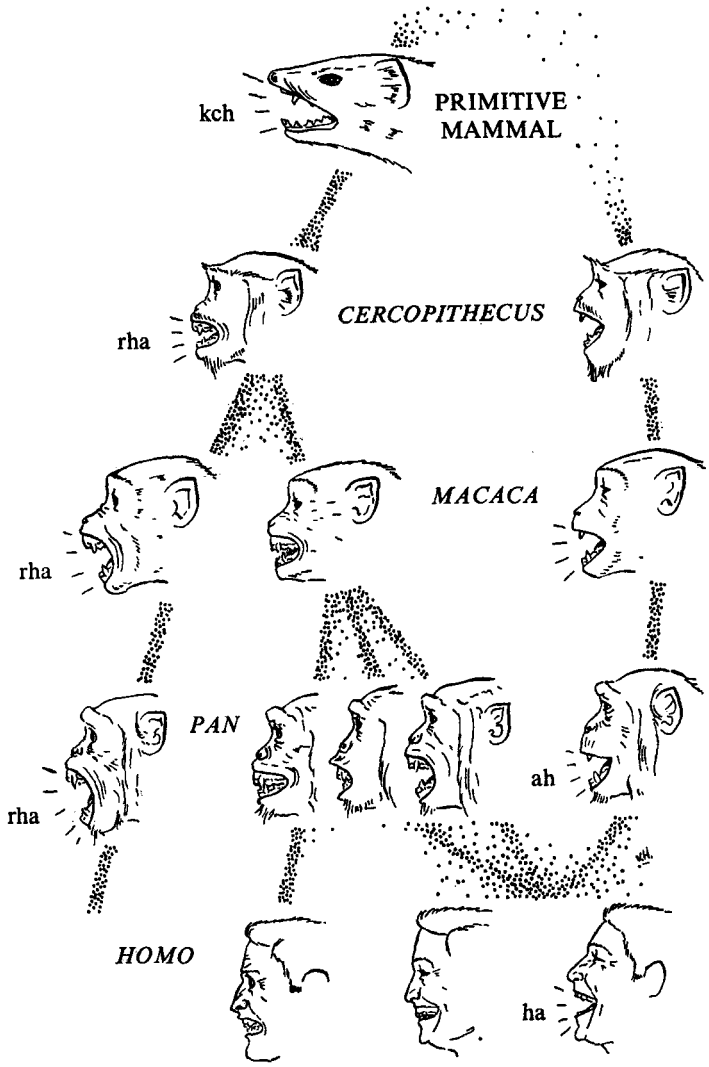
Lévi-Strauss used such a method to read different versions of the Oedipus myth (including Freud's) and Zuni Indian creation myths, concluding that they all dealt with a culture's inability to move from a primitive conception of human beings as "of the earth" to "the knowledge that [they] are actually born of man and woman." In keeping with his comparative approach, Lévi-Strauss stressed cognitive and cultural relativism. He dismissed "prevalent attempts to explain alleged differences between the so-called primitive mind and scientific thought," arguing instead "that the kind of logic in mythical thought is as rigorous as that of modern science."

Structuralism aspired to the status of a "science" —indeed, its proponents considered it the ultimate "science of man." Poststructuralism effectively turned structuralism against itself by insisting that structuralist readings only make sense within constantly changing and ultimately subjective contexts: What Lévi-Strauss's readings really exposed was the structure of *his* thought; other readers would have other responses. As the French critic (and onetime champion of structuralism) Roland Barthes put it, "Everything signifies ceaselessly and several times, but without being delegated to a great final ensemble, to an ultimate structure." There is, in the end, no final, ultimate meaning—only ongoing interpretation.

The turn to poststructural literary analysis in the early 1970s, write Nancy Easterlin and Barbara Riebling in *After Poststructuralism* (1993), "initially generated excitement because it seemed to tear the field of literary studies wide open, subjecting texts to radically subversive readings....Through an endless play of signifiers, the tyrannical world of finite textual meaning was replaced by a free realm of infinite ambiguity....Liberated from fixed systems of meaning, [the critic] ruled a vast empire of play and pleasure."

The poststructuralist position on science essentially boils down to a variation on Freud's famous rhetorical question, "Does not every science come in the end to a kind of mythology?" That is, science and the rational analysis it attempts are not qualitatively different from other sources of knowledge. Indeed, contrary to its grand claims to "universal" truth, science is merely one subjective form among others. What's more, like any other system, it only makes sense within its own set of self-confirming rules.

For poststructuralists, scientific inquiry cannot lead to anything approaching "objective" reality, either because no such thing exists or because, if it does, it is ultimately unknowable since the language we use to discuss it is inherently distorting and inadequate. In Derrida's famous phrase, "There is nothing outside the text"; that is, there is no way to get beyond language, to reach a vantage point from which we can verify or refute our basic systems of knowledge. "There is no meta-language," pro-



Laughing matters: The above chart traces the development of laughter and smiling in primitive mammals, monkeys, and human beings. The study of literature has always been an interdisciplinary activity and the evolutionary critics follow in that tradition. Their ability to synthesize new and ongoing research and to adapt it to their field provides a model of how such work can be done.

From Robert A. Hinde, ed., *Non-Verbal Communication*. Reprinted by permission of Cambridge University Press.

claimed Jacques Lacan, another major poststructuralist thinker, "for it is necessary that all so-called meta-language be presented to you with language."

In contemporary literature departments, the evolutionary critics–what with their references to "biological modes of thought," "primate evidence," and "scientific rationality"—are not simply out of step. They are beyond the pale, beholden as they are to spuriously "objective" facts, "transparent" truths, and "transcendent" positions.

What About Antibiotics?

When coupled with the work of the hugely influential French thinker Michel Foucault, such insights lead to an extreme conceptual relativism. Since no theory is objectively "truer" than another, the dominance of one theory over another is seen as less a function of that theory's explanatory power and more an artifact of intimidation and social control.

In an ambivalent homage to Francis Bacon (usually vilified as the apotheosis of the desire to understand something only to control it), poststructuralists equate claims to "knowledge" with the exercise of power; indeed, Foucault took to writing about "power-knowledge." In such an analysis, Enlightenment "science" and "rationality," far from liberating society from superstition and stultifying tradition, are simply new ways of gaining social or political control. In works such as *The Birth of The Clinic* (1963) and *Discipline and Punish* (1975), Foucault argued that the rise of modern medicine and progressive penal reform hardly represented the systematic, humane improvements their defenders claimed. Instead, they represented little more than new, increasingly efficient and insidious strategies of domination and repression. Indeed, in *Discipline and Punish*, Foucault suggests that the Catholic Inquisition—usually cited as a model of anti-Enlightenment inquiry—actually provided modern science with "its operating model." Both, he wrote, essentially express "an authoritarian search for a truth."

The upshot of such thinking is a skepticism toward all systems of knowledge, especially those, such as science, that make claims to objectivity. As Duke University's Stanley Fish has written, "The givens of any field of activity—including the facts it commands, the procedures it trusts in, and the values it expresses and extends—are socially and politically constructed, are fashioned by man rather than delivered by God or Nature." Hence, poststructuralism's emphasis on the "social construction of reality" and its attempts to "denaturalize" linguistic, social, and political practices—to show that any given system's foundations are ultimately built on sand.

Such moves often have considerable rhetorical and explanatory power. For instance, in *Madness and Civilization* (1961) Foucault's discussion of the rise of mental institutions in modern Europe, while historically suspect in many regards, nonetheless draws attention to how definitions of "insanity" and "mental illness" can function as ways of stigmatizing and controlling political dissent or other forms of unpopular behavior (an argument with significant parallels to Thomas Szasz's *The Myth of Mental Illness*, also published in 1961). Similarly, poststructuralists are undeniably right that mistaken and mendacious appeals to "God or nature"—and science itself—have often underwritten all sorts of repressive policies, ranging from slavery to denying women the right to vote to imprisoning homosexuals.

At the same time, poststructuralists pay a high price for maintaining what detractors refer to as "dogmatic skepticism" and what proponents celebrate as "radical subversion." "It is now the received wisdom that Western science and technology are merely hegemonic cultural constructions," writes Joseph Carroll. But "if those who propound these views were to take their propositions seriously enough to live by them, and not merely write books propounding them, the propositions themselves would soon disappear along with the observers....People who make such airy claims about science...still have their children vaccinated...use antibiotics, visit the dentist regularly, and willingly undergo surgical procedures designed to save their lives." The viability of such methods, Carroll underscores, does not depend on the beneficiary's belief in or understanding of the medical model.

In a poststructuralist context, then, the evolutionary critics—what with their references to "biological modes of thought," "primate evidence," and "scientific rationality"—are not simply slightly out of step: They are beyond the pale, beholden as they are to spuriously "objective" facts, "transparent" truths, and "transcendent" positions.

Critical Upstarts

Interestingly, the evolutionary critics (and the science they rely on) are quick to underscore the provisional nature of knowledge and recognize the ways in which social and cultural factors can muddy analysis. Modern science, while pursuing an ideal of complete understanding, acknowledges only partial success as inevitable. A similar sense of what might be called epistemological humility pervades the work of the evolutionary critics.

In a discussion of the scientific method, Carroll draws a sharp

distinction between the turn-of-the-century views of Leslie Stephen and later work by Karl Popper. Where Stephen believed in "accepted and ultimate truths," writes Carroll, Popper held that "all ideas are necessarily provisional conjectures and that none of them attains the status of absolute and final truth....Popper rightly rejects the naive positivist belief that there can be ideas that have no 'hypothetical element,' that consist wholly of 'fact,' and that are thus 'ultimate truths' that need never be modified." In a similar manner, Storey writes, "The 'truth of things' in all of its wholeness and baldness must forever elude the human mind."

In their emphatic rejection of traditional, dualist conceptions such as "nature vs. nurture" and "genetic vs. environmental determinism," the evolutionary critics display something like the poststructuralist penchant for showing how apparent oppositions collapse under close scrutiny. Certainly, they have little use for the exclusive categories of "nature" and "nurture." As Storey writes, "There is no separating the 'innate' and the 'learned.' Learning...can be carried out only by an organism biologically *prepared* to learn, and the 'innate' can manifest itself only if environmental conditions allow. ...Culture is both an expression and a critique of what the species...is biologically disposed to do." And as the evolutionary critics are quick to point out, "the natural"—an empirical category—bears no necessary connection to "the good"—a moral one.

None of this diminishes the evolutionary critics' vast differences with poststructuralism, chief among them the idea that science differs from other forms of discourse (especially in the requirement that it create falsifiable hypotheses) and the ability of human beings to gain knowledge of a world that exists beyond linguistic or cultural conventions. Such notions run completely counter to the philosophical anti-realism of poststructural thought and its unwillingness to acknowledge a world in which human beings have been marked by evolutionary processes.

Just as some Neanderthals walked among Cro-Magnon man, dying schools of literary criticism overlap with ascendant ones. Despite poststructuralist notions of swift and complete "paradigm shifts," literary criticism changes in a jerk-and-stutter fashion, with assumptions and methods of older schools incorporated into what comes next.

The "Constructivists" Self-Destruct

So what's next in literary studies? In virtually any discussion related to evolution, the question of what the future holds is always lurking around the edges—even as one recognizes that evolution is much better at explaining the past than predicting any particular future. There seems to be a growing sense that poststructuralism and its various "constructivist" cognates may be headed, if not for extinction, then to a serious decline in population. This may ultimately have less to do with poststructuralism's validity and more to do with scholarly appetites for innovation and novelty. The plain truth is that every critical school becomes unfashionable over time. Having enjoyed a dominant position for about 25 years, poststructuralism is simply approaching that limit.

To be sure, poststructuralism's imminent death has been reported with great regularity. For over a decade, reports have been trickling in that Derrida is no longer in fashion in Paris, implying that, as with the lag between haute couture appearing on the runways in the City of Light and its ready-to-wear counterpart showing up at the Mall of America, his days—and those of his poststructuralist *frères*—are numbered.

Why might it actually be true this time? Partly due to poststructuralist "discoursing" on science, of all things. Consider the most public—and embarrassing—example of this: In 1996, Alan Sokal, a physics professor at New York University, published an article called "Transgressing the Boundaries: Toward a Transformative Hermeneutics of Quantum Gravity" in the Spring/Summer edition of *Social Text*, a highly influential poststructuralist academic journal. In barely readable prose, Sokal purported to unmask the politically and philosophically reactionary Enlightenment "dogma" that "there exists an external world, whose properties are independent of any individual human being and indeed of humanity as a whole; that these properties are encoded in 'eternal' physical laws; and that human beings can obtain reliable, albeit imperfect and tentative, knowledge of these laws by hewing to the 'objective' procedures and epistemological strictures prescribed by the (so-called) scientific method." He further argued that "recent developments in quantum gravity... the emerging branch of physics in which Heisenberg's quantum mechanics and Einstein's general relativity are at once synthesized and superseded," were consistent with various progressive political ideas. In other words, he wrote a quintessentially poststructuralist critique of science.

At the moment the issue came out, however, Sokal announced in the pages of another publication, *Lingua Franca*, that his *Social Text* piece was a fake, a mixture of "solecisms...citations of authority, plays on words, strained analogies, and bald assertions." Sokal explained that he perpetrated the hoax because he was troubled by what he saw as a decline in academic rigor in "certain precincts" of the humanities. "Would a leading North

American journal of cultural studies ...publish an article liberally salted with nonsense if (*a*) it sounded good and (*b*) it flattered the editors' ideological preconceptions? The answer, unfortunately, is yes," wrote Sokal. "I intentionally wrote the article so that any competent physicist or mathematician (or undergraduate physics or math major) would realize it is a spoof. Evidently, the editors of *Social Text* felt comfortable publishing an article on quantum physics without bothering to consult anyone knowledgeable in the subject." That Sokal shares *Social Text*'s hard-left political leanings—indeed, he claims he was angered by the "progressive" left's turn toward "epistemic relativism" —only made the joke that much crueler.

Being had in such a forum is both humiliating and dispiriting, to say the least. In a response printed in *Lingua Franca*, the co-editors of *Social Text* passive-aggressively admitted that they "obviously...regret having published Sokal's article," let on that they considered Sokal's original manuscript "a little hokey," but said that they were willing to let "readers judge for themselves whether [they] were right or wrong" to publish the article. They also chided Sokal for fomenting left-wing infighting: "There is nothing we regret more than watching the Left eat the Left."

More interestingly, though, they attacked him for perpetuating the "caricature" of poststructuralists as "otherwordly fanatics who deny the existence of facts, objective realities, and gravitational forces. We are sure Sokal knows that no such persons exist." Stanley Fish, the executive editor at Duke University Press, which publishes *Social Text*, made a similar point in a *New York Times* op-ed piece on the matter.

Which means that poststructural thought, in the words of some of its better-known practitioners and in full public view, has been stripped of its very claim to difference. If it is merely suggesting that we should remain attentive to the limits of human knowledge and especially how they affect science, then poststructuralism is doing the same thing as its most insistent critics, but in a manifestly less informed way. Few critical movements can long survive such moments.

Evolving Future

This is not to suggest that poststructuralism or its assumptions will vanish overnight. Just as some Neanderthals walked among Cro-Magnon man, so too do dying schools of literary criticism long overlap with ascendant ones. Indeed, contrary to poststructuralist notions of swift and complete "paradigm shifts," changes in literary criticism happen in a jerk-and-stutter fashion. The assumptions and methods of older schools are typically incorporated, in part or whole, consciously or not, into what comes next. Variations on the "New Critics"—who employed a critical method stressing close reading and formal elements of texts and who ruled the literary roost for much of the postwar period—still walk the halls of English departments.

Evolutionary criticism is likely to benefit from growing interest in how the human mind works. As the social sciences and the humanities become more comfortable with the evolutionary paradigm, there may well come a time when undergraduates talk late into the night about monkeys, Milton, and the "obvious" connection between the two.

While poststructuralism's fortunes may be on the wane, evolutionary criticism's appear on the rise. The study of literature has always been an interdisciplinary activity, drawing on anthropology, history, philology, psychology, and sociology. The evolutionary critics' ability to synthesize new and ongoing research and to adapt it to their own field provides a model of how such interdisciplinary study can work. Evolutionary criticism is also likely to benefit from a broader intellectual interest in, as the title of Steven Pinker's recent book puts it, *How the Mind Works*. The profusion of books dealing with that and related topics—*The Symbolic Species*, by Terrence Deacon; *The Mind's Past*, by Michael Gazzaniga; *Language and Human Behavior*, by Derek Bickerton; *The Origin and Evolution of Intelligence*, edited by Arnold Scheibel and J.W. Schopf; and *Making Sense of Sex: How Genes and Gender Influence Our Relationships*, by David Barash and Judith Lipton, to name but a few—suggests that criticism informed by research that transcends the nature–nurture debate will likely find a significant readership.

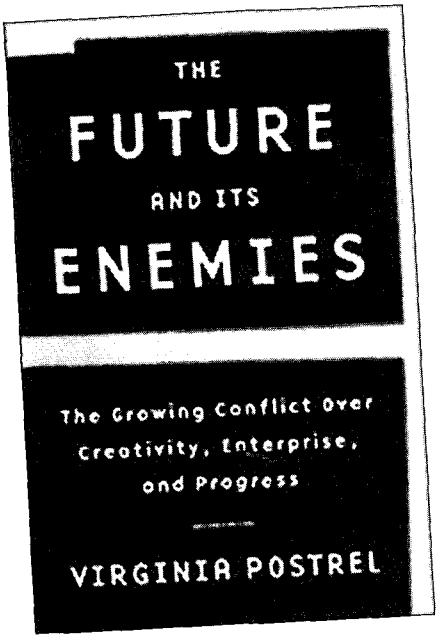
At the same time, evolutionary criticism likely has too narrow a focus and too technical a background for it to ever become much more than "something like a movement." Critical schools that achieve widespread institutional power are typically much more general in method and application. Whatever cachet it gains is much more likely to stem from its direct engagement with and thoroughgoing critique of poststructuralism, not from creating an army of critics who go into the classroom with Darwin in one hand and Dickens in the other. But there may well be a time in the not-too-distant future—Carroll suggests it's a matter of several decades, as the social sciences and humanities become more comfortable with the evolutionary paradigm—when undergraduates talk late into the night about monkeys, Milton, and the "obvious" connections between the two. ◆

Nick Gillespie (gillespie@reason.com) is a REASON *senior editor.*

"READ THIS WONDERFUL BOOK!"

—James K. Glassman
columnist, *The Washington Post*

The Book *Reason* Readers Have Been Waiting For



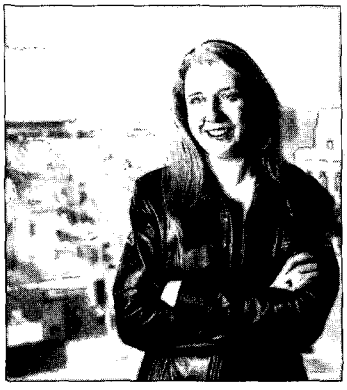
Virginia Postrel takes on the enemies of freedom and progress in a path-breaking exploration of how civilizations learn.

"Virginia Postrel skewers the pessimists of both the left and right who see technology as the enemy and nostalgia as their friend. Bubbling with enthusiasm, and fortified with examples that run from computers to shampoo, she exposes those whose futile efforts to dictate the future pose the greatest threat to progress and security alike."

—Richard A. Epstein, University of Chicago Law School, author of *Simple Rules for a Complex World*

"In this bold and compelling book, Virginia Postrel uses a breathtaking range of examples, from music to software to hairstyling, to argue that progress comes not from a master plan but from courage, experiment...and even playfulness. She makes you look again at what you thought you already knew."

—Esther Dyson, author of *Release 2.0*



"Virginia Postrel has a radically old-fashioned view of the future. She believes in progress. She thinks the world we are building, you and I, is a decidedly messy place, that nonetheless is turning out pretty nice. Go ahead. Imagine that."

—Joel Garreau, author of *Edge City* and *The Nine Nations of North America*

"The best damn nonfiction I've read in years!"

—Tom Peters, co-author, *In Search of Excellence*

fP FREE PRESS
$25

Coming to bookstores in December, or order your advance copy today through www.futureand.com or 1-800-CEO-READ (1-800-236-7323).

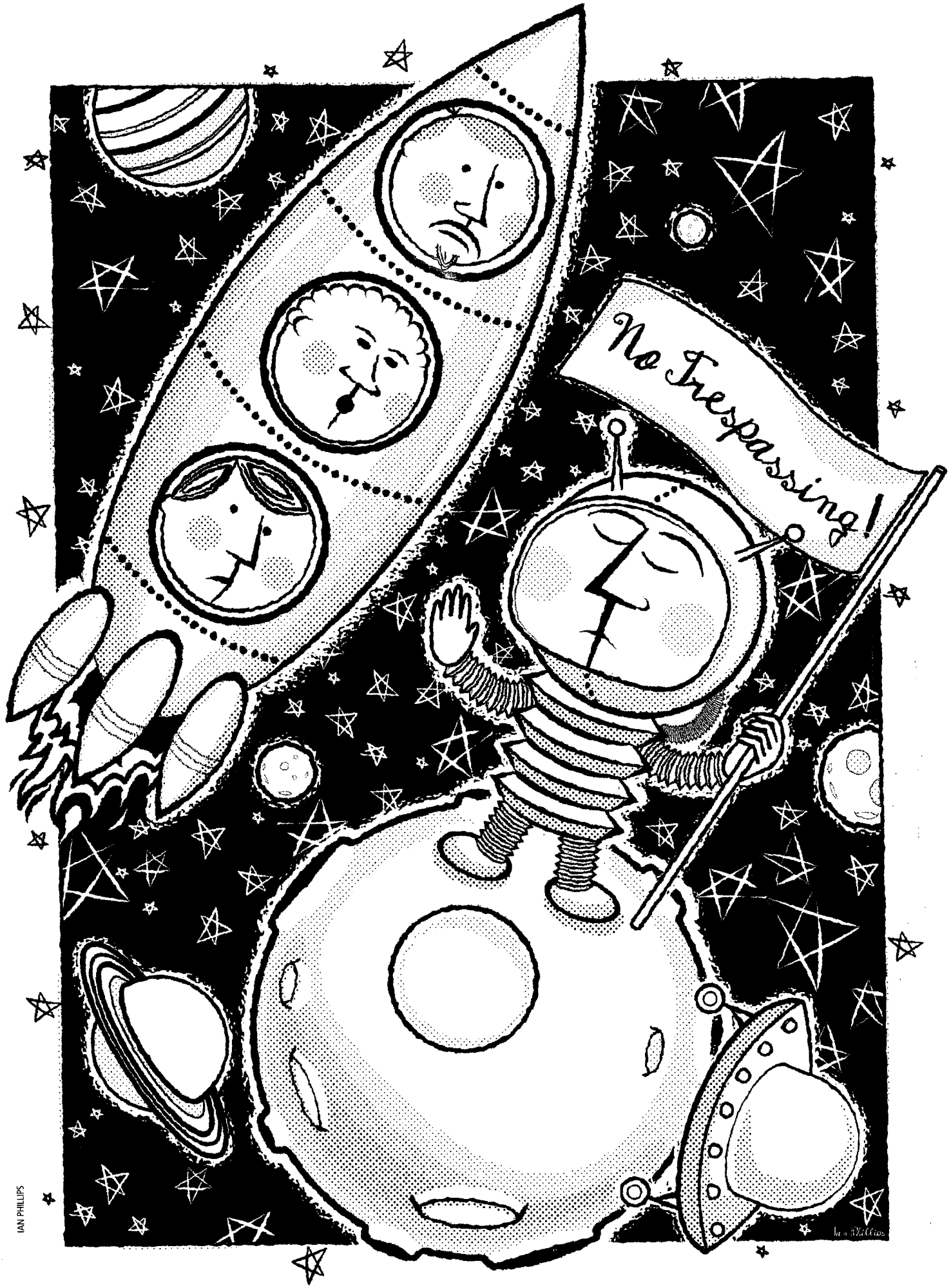
A Little Bit of Heaven

Space-based commercial development will happen sooner than you think. How a system of extraterrestrial property rights might emerge.

Jim Benson plans to declare ownership of an asteroid orbiting between Earth and Mars. And he doesn't much care what the United Nations has to say about it. "If the U.N. doesn't like it, they can send a tank up to my asteroid, which of course they can't," he told the *San Francisco Examiner* this past February. In an interview with REASON, the 53-year-old entrepreneur is in a less belligerent mood, but the gist of his message remains the same. "There's really no entity to which such a claim of ownership can be made," he explains. "Therefore I believe it just needs to be made to the public in general."

Benson is the founder and CEO of SpaceDev, a Colorado-based company that is planning the first commercial mission beyond Earth orbit. The firm's Near Earth Asteroid Prospector, which it hopes to launch by mid-2001, is a desk-sized probe that will move into orbit around one of the hundreds of known near-Earth asteroids, collecting and transmitting scientific data, which will be sold to NASA, universities, or other clients. The probe then will land on the asteroid itself, which will be the basis for SpaceDev's property claim—including the right to mine what could be a wealth of natural resources.

BY KENNETH SILBER



IAN PHILLIPS

Near Earth Asteroid Prospector: SpaceDev, a publicly traded company, expects to launch its first mission in 2001 and declare ownership of an asteroid. "If the U.N. doesn't like it," says SpaceDev CEO Jim Benson, "they can send a tank up to my asteroid."

SpaceDev is a publicly traded company, a fact that Benson expects will bolster the claim's legitimacy; the stockholders will "help strengthen the cause of property rights in space through sheer numbers," he says. He emphasizes that SpaceDev will not be accepting any government subsidies, since these might weaken the firm's assertion of asteroid ownership. Benson realizes that the Near Earth Asteroid Prospector will be navigating not only the depths of space but also a realm that is in some ways even more forbidding: the uncharted legal territory, and unpredictable politics, of owning property out there.

Benson is right to be wary of the United Nations. International law regarding space property rights is murky at best, downright hostile at worst. In particular, there are two international agreements, written under U.N. auspices, that are relevant to the question of owning territory or resources on celestial bodies such as the moon, the asteroids, and the planets. These are the Outer Space Treaty of 1967 and the Moon Treaty of 1979.

The Outer Space Treaty, which has been ratified by over 50 nations, including the United States, prohibits any claim of national sovereignty on an extraterrestrial body. The treaty makes no mention of private property, but it undercuts the ability of any government to recognize or enforce a private claim. Negotiated at the height of the U.S.-Soviet space race, the pact was a creation of Cold War politics; it assuaged each superpower's fear that the other might claim the moon or place nuclear missiles there. (The treaty bans military bases, weapons testing, and military maneuvers on celestial bodies.) The economic potential of space—the first commercial satellites had just been deployed in the mid-1960s—was a secondary consideration at most.

The Moon Treaty, too, reflects the international political climate of its era, in this case the 1970s emphasis on wealth transfer from the West to the Third World. The treaty (which applies to all celestial bodies, not just the moon) prohibits the ownership of territory by any government, "non-governmental entity," or "natural person"; space resources are defined as "the common heritage of mankind" and placed under the governance of an ill-defined "international regime."

The Moon Treaty, however, was not ratified by the United States, and it has dubious international standing; its signatories include Austria, Pakistan, and a half dozen other nations, none of them major space powers. Nonetheless, the treaty is nominally in force and could serve as a precedent for future attempts to collectivize the solar system.

The upshot of these treaties, and of the general silence of national and international law on extraterrestrial property rights, is that no entity can lay claim to celestial territory with any assurance that the claim will be generally recognized. No one knows what would constitute a valid claim, or whether there is any such thing. No asteroid mining firm or similar enterprise can be certain that its "No Trespassing" signs will be respected, or that its revenues will not be confiscated by a national authority or "international regime." Four decades into the space age, the moon, the planets, and the solar system's numerous minor bodies are devoid of economic activity and trapped in legal and political limbo.

Since no one is yet mining any asteroids or otherwise employing celestial real estate, worrying about property rights might seem premature or even absurd. But the issue of extraterrestrial property rights deserves to be taken seriously. The technologies required for the first private sector forays into interplanetary space are not the stuff of some far-off future. SpaceDev's planned asteroid probe, for instance, is essentially a smaller (and cheaper) version of a NASA spacecraft already en route to a near-Earth

SPACEDEV

asteroid. A telling display of the space industry's current capabilities occurred earlier this year, when the Hughes Space and Communications Company corrected the orbit of one of its satellites by sending it for a quick loop around the moon.

Meanwhile, the vast resources and potential economic uses of extraterrestrial bodies have begun to come into focus. Frozen water on the moon (as well as in the cores of numerous near-Earth asteroids) may someday serve as a propellant or means of life support. Lunar helium-3 or Martian deuterium might provide the fuel for nuclear fusion reactors. Asteroidal titanium, copper, and other metals might be used as construction materials for satellites or space stations; even ordinary rock could prove valuable, as a radiation shield for spacecraft.

And natural resources may compose only one sector of the extraterrestrial economy. Already, ideas abound for entertainment, tourism, and other industries. Virginia-based LunaCorp seeks to place a remote-controlled rover with a camera on the moon, to be operated by paying customers. Looking further ahead, Hilton International has toyed with the idea of a lunar hotel.

Some proposals for extraterrestrial enterprise may turn out to be fanciful; others may succeed beyond anyone's dreams. These are matters for the market to decide, in an ongoing process of trial and error. But that process is distorted, or even preempted, by the current legal ambiguity concerning property rights. Because of the uncertainty about who can own what, enterprises that would make use of celestial territory may find it difficult or impossible to obtain capital. High startup costs are hard to justify, and long-term planning is thrown into doubt; the few proposals that gain credibility do so by identifying short-term revenue sources that don't depend on a property claim (such as SpaceDev's planned sales of asteroid data). The crucial role of expectations in giving value to land or other resources before they are used is gravely weakened by the insecurity of ownership.

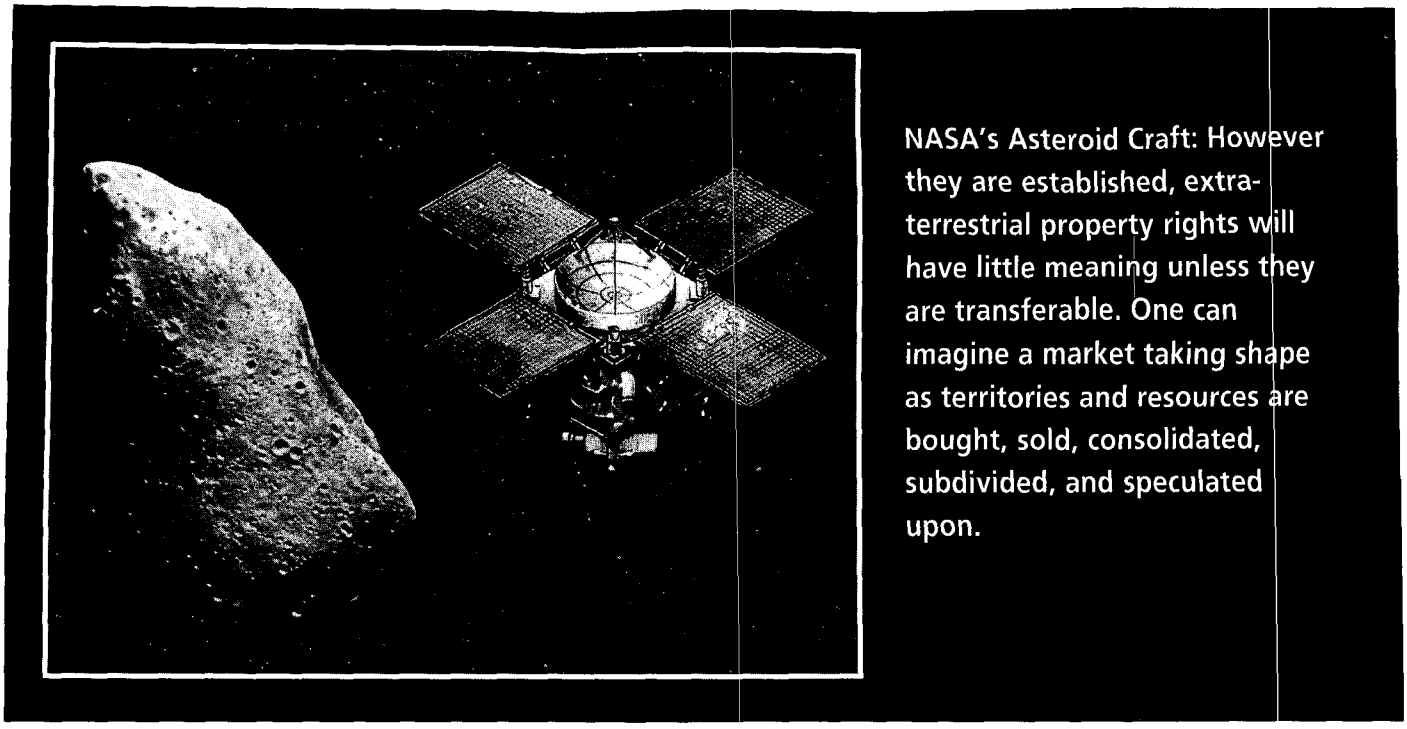
The lack of property rights not only makes it harder for the private sector to reach extraterrestrial bodies; it also creates perverse incentives for how to behave once there. Lawrence D. Roberts, an expert on space law at Seton Hall University, notes the possibility of a celestial "tragedy of the commons": companies rushing to grab communal space resources (before anyone else does) without regard to environmental consequences. Mining companies might create an atmosphere of dust around the moon, for instance, or overexploit the known sources of lunar ice (located in craters near the satellite's north and south poles). Lest such concerns seem remote or farfetched, it is worth noting that space already has an environmental problem, in the thousands of pieces of old satellites and rockets that clutter Earth orbit and pose dangers to manned and unmanned spacecraft.

Still, from a libertarian viewpoint, the ambiguous status of celestial bodies in national and international law might seem to have a positive side. After all, governments are forbidden from making claims of national sovereignty, while few clear restrictions are imposed on the private sector. California entrepreneur Dennis Hope has cheerfully pushed this interpretation to an extreme: His firm, Lunar Embassy, sells paper "deeds" to lunar real estate, since the Outer Space Treaty does not prohibit such private claims. Other space enthusiasts speak of a "loophole" in the treaty. The agreement is normally interpreted as allowing an entity to keep material it has "extracted"; thus, the U.S. government became the owner of moon rocks from the Apollo missions. Under the principle of extraction, some argue, a company could assure its ownership of an asteroid by moving it to a new orbit.

But any notion that the legal vacuum could prove helpful to economic activity—with companies operating in deep space, blissfully free of taxes and regulations—is quite implausible given legal and practical realities. The Outer Space Treaty explicitly subjects all nongovernmental space activity to governmental "authorization and continuing supervision." The pact may prevent the authorities from protecting private property, but it does not stop them from expropriating it (or its proceeds). Nor is it likely that sheer physical distance will effectively remove space enterprises from governmental jurisdiction; it will be a long time before any private entity is able to operate in space without extensive support facilities (and a bank account) on Earth. And the central problem of "anarchocapitalism"—protecting property against private transgressions—is not resolved simply because the property happens to be located on a celestial body.

Two key questions about property rights in space must be addressed: First, who is the relevant authority (and how does it enforce the rules)? Second, how does someone become a property owner?

Any workable system of extraterrestrial property rights, then, requires more than merely not violating, or creatively interpreting, existing laws and treaties. Such rights must be legally recognized and enforceable; some form of authority must be involved, and its role (and limits) clearly defined. There must be explicit standards regarding the acquisition and use of property.



NASA's Asteroid Craft: However they are established, extraterrestrial property rights will have little meaning unless they are transferable. One can imagine a market taking shape as territories and resources are bought, sold, consolidated, subdivided, and speculated upon.

This is not to say that all legal and regulatory details can or should be determined in advance; the system must be sufficiently flexible to cope with evolving uses and problems. But in broad outline, a property rights system can be conceived, and put into practice, right now.

Two key questions must be addressed: First, who is the relevant authority (and how does it enforce the rules)? And second, how does someone become a property owner? To find plausible answers to these questions, it is worth considering a range of possibilities, including some that have serious drawbacks.

With regard to the question of authority, one can imagine several untenable extremes as well as a viable middle ground. One extreme would be a unilateral assertion of national authority. For example, the U.S. government could abrogate the Outer Space Treaty and declare sovereignty over some or all of the moon (while noting that the American flag is already there). Or, a bit more subtly, a government might extend recognition to certain property claims (probably those of its own citizens or companies) even without claiming sovereignty over the territories in question. Such unilateralism, however, would generate international tensions and, in all likelihood, competing claims by foreign governments. The rights of the supposed property owners—recognized by the courts of only one country—could hardly be said to exist.

The opposite extreme would be excessive internationalism: placing jurisdiction over extraterrestrial property rights in the hands of the U.N., for example, or requiring a global consensus among governments. An international body charged with such responsibility probably would be either powerless (lacking its own enforcement mechanisms) or dangerously powerful—and in either case, lacking the accountability instilled by democratic, national elections. A broad multilateral consensus is, at best, a distant goal, and would require the consent of various regimes that have shown little respect for property rights on Earth, let alone in space.

The middle ground is found in reciprocal obligations among national governments. In such a scenario, the United States and several other countries (possibly a small number to begin with) agree to recognize certain extraterrestrial property claims by private entities of each other's countries (as well as their own). The participating nations explicitly forswear any claim of national sovereignty; long-term questions, about self-governing space colonies and the like, are held in abeyance. Any national government can join the system, provided it agrees to basic standards regarding the validity of property claims (and civil or criminal penalties for their violation). Even private entities located in nonparticipating countries are eligible for property ownership, provided they agree to be subject to the same standards and penalties.

How is any of this enforced? No all-powerful international court is required; the courts of the participating nations adjudicate claims and disputes (in accordance with agreed-upon standards). Nor is it possible to trample extraterrestrial property rights with impunity from outside the borders of the signatory countries. Any product made in defiance of a recognized property claim (using materials extracted from someone else's asteroid, say) is subject to confiscation or punitive tariffs upon entry to a participating nation. Furthermore, any government or other entity using force to override a property right is subject to military action as well as economic sanctions. And these penalties all can be implemented on Earth; at least for the foreseeable future, no space-based army or police force is required.

Regarding the initial acquisition of property rights, here too the system's viability may depend on its capacity to balance competing approaches and priorities. A venerable legal tradi-

THE JOHNS HOPKINS UNIVERSITY APPLIED PHYSICS LABORATORY

tion, traceable to ancient times, supports the granting of ownership to the first entity that literally sets foot upon a particular territory. Yet modern courts also have recognized certain territorial claims established without a direct human presence, as when salvage firms explore undersea wrecks via remote-controlled cameras. By analogy, one can imagine a hierarchy of claims in space: Full ownership of territories (of specified size) might be reserved for entities that conduct manned missions or establish human settlements. More limited forms of ownership (mining rights, for example), or simply smaller land grants, might be allocated to entities that send robotic probes to survey a territory (to a specified degree of precision).

Some proponents of manned space exploration oppose the notion of granting property rights based on robotic expeditions. Alan Wasser, a board member of the National Space Society, argues that such rights would diminish the incentives and prospects for human space colonization. Why, he writes, "would we want to give someone a land grant for some small step and allow them to do nothing more for the next 20 years except stop anyone else who is ready to settle and develop the land?" This argument is questionable even if one shares Wasser's priorities. Robotic missions might well provide the technological and economic underpinnings for subsequent human activities. And robotic missions may have economic and social benefits in their own right and for that reason alone be worthy of property protection.

Extraterrestrial property could also be allocated through procedures requiring no physical staking of claims by either humans or robots. As a few space enthusiasts have suggested, governments might simply auction unused or unexplored portions of celestial bodies to the highest bidders. A rough precedent can be found in present-day auctions of intangible assets such as use of the electromagnetic spectrum. But such an approach, whatever its benefits in generating public revenue and assigning immediate value to the properties, should be used sparingly, if at all. Weakening the link between territorial claims and actual exploration could undermine the perceived legitimacy of the property rights system, and so could the implication that the properties were "public" in their initial state. That notion could open the door to property distributions based on interest-group politics or arbitrary government power.

However they are initially established, extraterrestrial property rights will have little meaning unless they are transferable. One can imagine a brisk celestial property market taking shape as territories and resources are bought, sold, consolidated, subdivided, and speculated upon (with speculators providing much-needed liquidity and risk tolerance). Properties could even be linked to new types of "derivative" instruments—Martian deuterium futures, say, or lunar Real Estate Investment Trusts—tailored to various investor needs. Such financial "rocket science" might prove almost as important as the nuts-and-bolts type in creating a prosperous extraterrestrial economy.

Would such a property rights system result in dominance of space by some narrow economic elite? To the contrary, space is likely to prove hostile to concentrations of economic power. The territories and resources involved are vast; the markets are new and unpredictable. A company owning a dozen asteroids may find that it is just a bit player in the larger scene. The workings of a shareholder economy may distribute ownership among a broad public, and entrenched terrestrial industries may encounter new competition from space. Will the Third World be left behind? The current proliferation of space technology indicates otherwise, as nations such as India, Brazil, South Korea, Turkey, and Malaysia venture into the commercial satellite industry and other space-related fields.

To be sure, any attempt to create an extraterrestrial property rights system will draw resistance. Social critics might argue that celestial bodies are "the common heritage of mankind" and should be shared accordingly. The burden will be on them, however, to explain why socialism would work better in space than on Earth. Environmentalists might argue that such bodies are emphatically not the "heritage" of mankind and thus should be owned by no one. But as noted earlier, it is the absence of property rights that creates incentives for wasteful exploitation of celestial bodies. Moreover, space industries may provide crucial environmental benefits to Earth by tapping cleaner forms of energy and allowing pollution sources to be located far from human populations.

Any attempt to create extraterrestrial property rights will draw resistance. The debate will be vociferous, but property rights and free markets are too important to be confined to a single small planet.

The debate could be a vociferous one, but it is well worth having. Property rights and free markets are too important to be confined to a single small planet.

Kenneth Silber (ksilberny@aol.com) has written about space technology for Insight, The Weekly Standard, *and other publications.*

Serving the President

When must the president obey a subpoena?

By Keith E. Whittington

Long after the tawdriness that has become the Clinton administration is forgotten, the effects of the Lewinsky episode on the presidency will still be felt. In his "war" against Independent Counsel Kenneth Starr, the president has deployed every available weapon. A variety of presidential privileges have been dusted off or made up—from privileges of communications with government lawyers or political advisers to privileges preventing Secret Service agents from testifying about what they have witnessed while on duty. The shame is not that the courts have uniformly rejected these claims but that they were litigated in the first place.

One significant issue remains unsettled: whether a president is legally obligated to comply with a subpoena. Although it appears that this question will not be answered during the Clinton presidency, current events suggest that the issue will eventually have to be resolved. In 1974, the Supreme Court ordered Richard Nixon to turn over the Watergate tapes, but the Court has not yet required a president to testify in a civil or criminal proceeding. By reaching a voluntary arrangement with the president to testify before the Whitewater grand jury, Starr avoided lengthy litigation, and Clinton avoided another potentially embarassing legal defeat. Starr seemed hesitant to strip away this last vestige of presidential cover, and rightly so. The president's duty to comply with a subpoena raises tricky constitutional issues. As a nation we would be better off if the question were not settled in court.

Thomas Jefferson was the first president to face this problem, and he insisted that the president could not be independent of the judiciary if "he were subject to the *commands* of the latter" and "if the several courts could bandy him from pillar to post." Similarly, in his *Commentaries on the Constitution* (1833), Justice Joseph Story concluded that the president must be allowed to perform his duties "without obstruction...accountable only to his country, and to his own conscience."

Yet Kenneth Starr obtained a subpoena for President Clinton to appear before the Whitewater grand jury and withdrew it only after the president agreed to testify. Starr clearly decided that a second appearance by the president was unnecessary, but Clinton's uncooperative behavior before the grand jury must have made that a difficult call.

Our reaction to President Clinton's failings should not be to further narrow the inquiry into his presidency and create more rules that he and future presidents must follow. The president is not above the law, but he has constitutional responsibilities that cannot be reduced to mere legalisms.

If a prosecutor believes a president is being uncooperative to such an extent that issuing a subpoena is his only option, must the president comply? How would a president be punished if he refused? Who would put the president in jail for contempt? Such practical questions highlight the difficulty of thinking of the president as if he were a private individual rather than a constitutional officer.

There are strong constitutional arguments on both sides of this issue. Since a refusal by the nation's chief law enforcement officer to obey a court order is deeply troubling, those who value the rule of law might argue that a president should comply with any subpoena. Claiming that the president is not required to obey normal judicial procedures smells suspiciously like the kind of monarchical privilege the Founders rejected.

There is also the general responsibility the president has for guaranteeing the continuation of our constitutional system of government, what Nobel laureate James M. Buchanan has called "constitutional ethics." The president has a constitutional responsibility to uphold the rule of law, and he should testify when called unless there are compelling reasons not to do so.

The president also has a responsibility to faithfully execute the laws. As Harry Truman noted, the buck has to stop somewhere. Richard Nixon acted on this assumption when he fired Watergate prosecutor Archibald Cox after promising Cox the freedom to conduct an independent investigation. Nixon's justification for firing Cox was inadequate, however, and the president appropriately suffered the consequences. The check on his actions, though, was political rather than legal.

Fortunately, presidents (even Bill Clinton) have made arrangements to be deposed when asked. And the extraordinary procedures the courts have employed in those cases underscore the unique status the president holds. Recall that Clinton's grand jury testimony was transmitted from the Map Room of the White House by closed-circuit video, not given before the jurors at the federal courthouse.

Yet federal prosecutors aren't the only persons who may wish to subpoena a president. As a defendant in a treason trial in 1807, Aaron Burr prevailed on Chief Justice John Marshall to subpoena President Jefferson to turn over relevant correspondence. When Jefferson refused to fully comply, the Court backed off, leaving the issue unsettled. The trial pitted Jefferson against two political enemies, Burr and Marshall, so there was room for cries of partisanship on both sides.

But the trial did signal the dangers of the subpoena power. Even when the president has not been the subject of an investigation, litigants have tried to claim his relevance to their own suits. The American judiciary is independent of the executive branch, opening the possibility that hostile judges could use their legal powers to harass and hamper a president, perhaps with the encouragement of partisan litigants.

Could any two-bit local prosecutor subpoena the president? Fortunately, as a matter of federalism, there are well-established principles for distinguishing federal subpoenas from local ones and for recognizing presidential immunity from the latter.

In the early decades of the 19th century, several states tried to prevent the congressionally chartered Bank of the United States from operating within their borders and competing against state-chartered banks. In 1819, the Supreme Court struck down a stiff Maryland tax on national bank notes. As Chief Justice Marshall pointed out, the people of Maryland were represented in Congress as a part of the whole, but the rest of the nation was not represented in the Maryland legislature. The national government could not be held hostage to the intense policy preferences of a political minority that happened to control a state government. Similarly, the president cannot be held hostage to the whims of a local prosecutor or trial judge, even if the motives of the state court are sound. The constitutional consequences of placing the president within the power of a state court are too severe to depend merely on good faith.

While the Constitution is silent on the president's proper relationship to the federal judiciary, it specifically makes the president accountable to Congress. As a consequence, the independent prosecutor is uniquely positioned to subpoena the president.

The independent prosecutor was created in the aftermath of Watergate to avoid another spectacle similar to the Cox firing. Since it remains doubtful that a president could be indicted before being impeached, the independent counsel's inquiries into presidential misconduct should most appropriately be seen as adjunct to the impeachment process.

It is unclear whether this is an appropriate way of pursuing impeachment inquiries, or whether a grand jury is the proper venue for acquiring evidence for a potential presidential impeachment. Nonetheless, Congress essentially uses independent counsels as preliminary investigators for possible impeachments.

In the current controversy, defenders of the Clinton administration have claimed, somewhat disingenuously, that Starr's investigation is partisan. But they also recognize that public opinion will weigh heavily on how the president should be held accountable for any misdeeds.

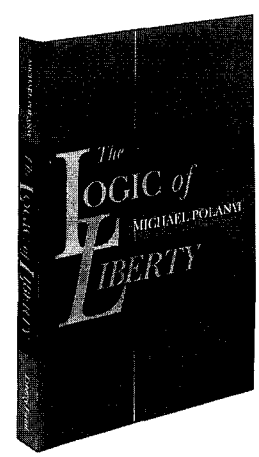
After all, the "character issue" did not prevent Clinton from being elected and reelected, and—recent stock market gyrations aside—the economy does seem to be humming along nicely. With the revelation of each new indiscretion, the president's approval ratings seemed to go up.

If Clinton truly believed that Starr's

Modern Editions of Classic Works for Readers Today

THE LOGIC OF LIBERTY

By Michael Polanyi
Foreword by Stuart Warner



A chemist and member of a family renowned for its learning in several disciplines, Michael Polanyi experienced first-hand the horrors of totalitarian government and worldwide war. Consequently there is a singular weight to Polanyi's challenge to advocates of centrally planned scientific inquiry or the centrally planned implementation of scientific discovery. He argued that organizations—or governments—based solely on the methods of science threaten to foreclose a full human knowledge of the mysteriesof existence and therefore pose a direct threat not only to academic freedom but to social and political liberty. The very triumphs of science in the modern era, Polanyi believed, at least affect and sometimes threaten liberty: "Our discovery and acceptance of scientific knowledge is a commitment to certain beliefs which we hold, but which others may refuse to share." This fateful interrelationship between science and liberty in our time is given supreme and elegant reflection in ***The Logic of Liberty***.

Michael Polanyi (1891–1976) was an internationally renowned scientist, philosopher, and professor whose other works included *Personal Knowledge* and *The Tacit Dimension.*

Stuart D. Warner is Professor of Philosophy at Roosevelt University, Chicago.

256 + xxi pages. Foreword, preface, acknowledgments, bibliography, index.

Hardcover	$16.00	0-86597-182-X
Paperback	$ 9.00	0-86597-183-8

(Indiana residents add 5% sales tax)

Call 800-955-8335
Fax 317-579-6060
or write: Liberty Fund Inc.

We pay UPS shipping on prepaid orders.

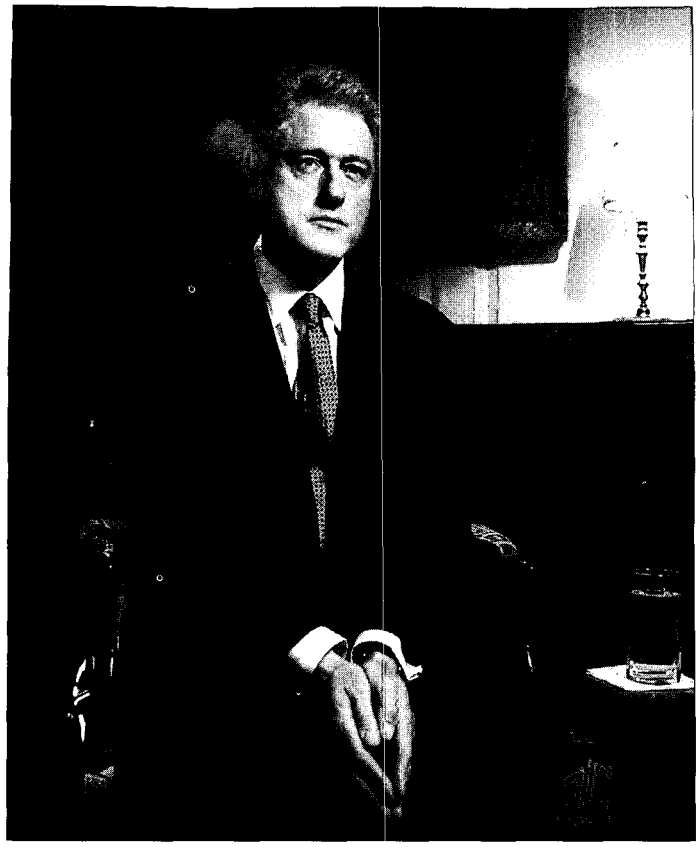
8335 Allison Pointe Trail, Suite #300, Dept. REA8, Indianapolis, IN 46250
Explore Liberty Fund's catalogue on the World Wide Web at
www.libertyfund.org

investigation is a partisan witch-hunt, then he should have acted, as president, on that conviction. The president has the statutory power to dismiss Starr.

Moreover, if issued a subpoena he does not feel obligated to obey, the president should address the nation and announce his refusal to cooperate with what he considers a corrupt investigation. In doing so, the president would be acting as a high constitutional officer, rather than an evasive criminal defendant. The nature of such a challenge would make it clear that the appropriate forum for evaluating the credibility and significance of the investigation would be Congress, not the courts.

Refusing to comply with a subpoena, especially under the present circumstances, would not be a simple violation of the law. It could be an abuse of office, a "high crime and misdemeanor." If the Supreme Court were to take primary responsibility in this matter, it might tend to reduce the issue to the minimal conditions of law, to the ways in which the president is like any other citizen.

Forcing Congress to take responsibility, however, would emphasize the ways in which the president is not like any other citizen. It would both put his refusal in the proper context and allow the nation to consider what our constitutional order requires. The Constitution imposes obligations on the president, and it specifies a mechanism (impeachment) for enforcing those obligations. If an impeachment proceeding goes forward, the judiciary can only get in the way.



Who's Sorry Now?: The president hopes to admit to wrongdoing while getting off on a technicality. A chief executive captive to legalisms forces us to hem in his office with inflexible laws.

Oliver Wendell Holmes once said that the law must see the world from the perspective of the "bad man." Holmes made a distinction between law and morality: The bad man will only calculate the "material consequences" of his actions, and will not heed the "vaguer sanctions of conscience." To be effective, Holmes said, the law must assume that everyone is bad, a potential criminal.

Yet we expect public officials to act in a way that sustains constitutional government rather than undermines it. The Clinton administration has not understood the implications of constitutional ethics. The president and his advisers think like lawyers, and their failure to recognize the president's duties has driven the current scandal to approach the level of a constitutional crisis.

The president has adopted the perspective of the Holmesian bad man. When admitting to lying about his relationship with Monica Lewinsky, Clinton emphasized that his statements before the grand jury were "legally accurate." The president hopes to admit to wrongdoing but get off on a technicality. This is our reward for allowing the president to adopt a legalistic perspective on the Constitution.

A president captive to legalisms forces us to hem in the office of the presidency with laws. But this strategy can be fatal for a republic. Unless we demand that our leaders act in a constitutionally ethical manner, we are destined to be exploited by the next "Tricky Dick" or "Slick Willie." In addition, we lose needed flexibility if we substitute fixed rules for versatile principle. More significantly, we expect more from our elected officials than compliance with the minimum requirements of the law.

When, during his own impeachment, President Andrew Johnson sought to claim the same rights as every other citizen, the Radical Republican Benjamin Butler declared that the president has no constitutional rights. As Butler emphasized, the overwhelming feature of the presidency is not his "rights" as an individual but his responsibilities as an officeholder. We should be clear on what they are.

We do not expect the president to think only like a lawyer. Clinton's bobbing and weaving in response to questioning, his parsing of sentences to their legally minimal meaning, may be tolerable as a matter of law, but it sets a dangerous constitutional precedent. The issue is not presidential perjury but abuse of trust. Something important is lost if we collapse that distinction.

We would be making the same mistake as the president, however, if we adopted his legalistic perspective. Our reaction to President Clinton's failings should not be to further narrow the inquiry into his presidency and create more rules that he and future presidents must follow.

The president is not above the law, but he has constitutional responsibilities that cannot be reduced to mere legalisms. Constitutional ethics are not the same as private legal obligations. The president should act presidential.

Keith E. Whittington (kewhitt@princeton.edu) is assistant professor of politics at Princeton University and author of Constitutional Construction: Divided Powers and Constitutional Meaning, *to be published by Harvard University Press in the spring.*

AP / WORLD WIDE PHOTOS

Organ Grinders

The federal government's idea of "fairness" may exacerbate an already deadly organ shortage.

By James V. DeLong

A few decades ago people joked that the human body, once its divine spark was extinguished, was worth about $2.00, which was the market value of its constituent chemicals. Times change, and the revolution in organ transplant technology has turned our bodies into mines of valuable spare parts.

But restrictions on the procurement and distribution of organs hamper the use of this resource, with deadly consequences. A new federal rule is apt to make matters worse.

In 1996, 281 hospitals performed almost 20,000 of the five most common major-organ transplants (kidney, liver, pancreas, heart, and lung), at a cost of more than $5 billion. (See table.) The main constraint on the system is the supply of organs. The 19,366 transplants in 1996 relied on organs from 5,417 cadavers and 3,553 living donors. Eighty-six percent of the latter involved transfers between relatives, usually of kidneys. More bodies are needed, but only 10,000 to 15,000 of the 2.4 million deaths in the United States each year produce recyclable organs, and the number of people on waiting lists keeps growing, from 27,805 on the list at some time during 1988 to 72,386 in 1996. More than 4,000 patients will die this year waiting for organs.

These waiting list numbers actually understate the shortfall. No one gets on a list until he passes "the green screen" by demonstrating his ability to pay for the operation, which in practice means that he must have first-class health insurance coverage. Medicare/Medicaid pays for 39 percent of all transplants, private insurance for 38 percent. For 20 percent of patients, the type of payment is unknown. The remaining 3 percent is spread among miscellaneous sources such as "other government" and "self." The number of patients filtered out by the green screen, who could benefit from transplants if the price came down enough for them to pass it, is conjectural.

Corneas are not in short supply. Many more suitable organs are available, and in many states dead patients' family members are presumed to consent to the harvest unless they specifically say no. Since few know about this policy, few refuse. The average cost of a cornea transplant is $8,000, and 45,000 are performed each year. Other transplants are much more expensive: $172,000 for a kidney, $317,000 for a heart, $394,000 for a liver (including five years of follow-up).

The National Organ Transplant Act of 1984 bans the sale of human organs. The donor is supposed to be inspired solely by the spirit of giving. Doctors and hospitals, however, may charge substantial sums for the services involved in transplanting. The nation's 63 federally approved organ procurement organizations collect an average of $24,000 per organ, or $70,000 per cadaver, from ultimate medical payers. This money is divided among the procuring organization, the harvesting hospital, and, according to some allegations, medical personnel. The exact split is murky.

The 1984 law also set up the Organ Procurement and Transplant Network (OPTN) to promote the sharing of organs across geographic boundaries. The OPTN is run under contract by a private corporation called the United Network for Organ Sharing, which is in turn run by the private institutions with an interest in transplants. The original idea behind the network was that an organ would be used locally if possible, but if no suitable recipient could be found or if local facilities for transplanting were not adequate, the OPTN would broaden the search.

In 1988 only about 25 percent of recovered livers were used locally; 66 percent were shared with other centers; and the

Transplant Programs, 1996

	Kidney	Liver	Pancreas	Heart	Lung	Acquisition Cost	Total
No. of programs	253	120	120	166	94	----	753
No. of transplants	11,099	4,058	1,022	2,342	805	----	19,326
Avg. charges per operation	$94,000	$290,000	$110,000	$228,000	$241,000	----	
Total costs of operations	$1.0B	$1.2B	$0.1B	$0.5B	$0.2B	----	$3.1B
Avg. cost per transplant (operation and five-year follow-up)	$172,000	$394,000	$149,000	$317,000	$312,000	----	
TOTAL COST	$1.9B	$1.6B	$0.2B	$0.7B	$0.3B	$.05B	$4.75B

Total hospitals: 281

Source: United Network for Organ Sharing

rest went for research or had to be discarded. The pattern was similar for other organs. During the last decade, the percentage of organs used locally has risen. It was 62 percent for livers in 1996, and there have been comparable increases for other organs. This trend occurred because knowledge of surgical techniques became more widespread and medical centers found transplant programs increasingly attractive. Such programs lend a cutting-edge aura to hospitals, doctors like them, and they bring in welcome overhead payments. As a result, the number of centers has expanded dramatically. Today, 124 centers do livers, for example, compared to two in 1983.

Other changes have cut the other way, against localism. Preservation techniques have improved, so organs that would once have been used locally or not at all can now be shipped across the country. Citing this development, some of the pioneer programs that have been losing market share in recent years have started to pressure the Department of Health and Human Services for a national system of organ allocation. According to *National Journal*, the University of Pittsburgh—which went from 569 liver transplants in 1990 to 244 in 1996, even as the national total doubled—has spent $260,000 to lobby Congress and enlisted two certified Friends of Bill to lobby the White House and HHS.

Congress and HHS have already taken steps toward establishing a national organ plan. Under the original version of the organ transplant law, membership in the Organ Procurement and Transplant Network was voluntary, and the network played a role only when an organ could not be used locally. In 1986 Congress required all transplant hospitals to join the OPTN and agree to adopt any allocation policies approved by HHS, on pain of losing Medicare eligibility.

Under an HHS rule scheduled to take effect on October 1, organs would go to the medically neediest person on the national waiting list, wherever he is located, as long as transport is technically possible. (Kidneys last 72 hours; livers 12 to 24; hearts only six.) "Neediest" means most in danger of imminent death. This standard would replace the multiple and only partly articulated criteria currently applied at the local level. For example, the OPTN's criteria for kidneys give extra points to people under 18. Data on waiting times for livers hint that transplant centers favor children for these organs as well.

In justifying the new rule, HHS notes that waiting times under the current system vary, sometimes widely, from one part of the country to another. The department argues that patients everywhere should have an equal chance at an organ under uniform medical criteria. HHS draws no distinctions by age or cause of disease.

The HHS rule has prompted loud objections. At the local level, relations between the organ procurers who get the families to sign on the dotted line and the transplanters are tight, and the centers take a proprietary view of their acquisitions.

HHS is making a moral judgment by establishing a standard of "sickest first" for organ transplants. It is deciding that a small chance of a couple extra years for a cirrhotic senator is more important than a good shot at 40 years for a young person who contracted a rare liver disease while serving in the Peace Corps.

Sharing is often low on their list of priorities. In testimony this year, an HHS official told Congress with horror that sometimes, even when another hospital has a perfect match, a center will give up an organ only upon a promise of future repayment in kind. States are also taking a proprietary view: Louisiana, South Carolina, Wisconsin, and Oklahoma have passed laws purporting to require that organs donated locally be used locally. The OPTN and HHS are still negotiating, and as this is written it seems unlikely that the new rule will take effect on schedule.

Proponents of localism note that transplants require a lot of follow-up, and they argue that patients do better if the operation takes place near home. They also believe that people are more likely to donate organs if they know their gift will be used locally. Another argument, hinted at but rarely stated explicitly, hinges on the fact that procuring organs requires confronting a family at its moment of maximum anguish. Medical personnel are more likely to steel themselves for this task if the organs they obtain will be transplanted by surgeons they know into their own patients. If the organ is going off to who-knows-where, the procurement effort is likely to be perfunctory.

More mercenary considerations are also at stake. If priority is given to local use, then the industry will be characterized by a multitude of local programs, each performing a limited number of transplants. It will be difficult for national centers to develop because such entities cannot be supported by donations in a single city.

Sixty percent of the people on the waiting list for the University of Pittsburgh's liver transplant program are from outside the area, for example, even as the number of procedures performed there has declined. The local centers fear that HHS wants to move toward a system of major national transplant facilities.

The centers argue that HHS's "sickest first" policy serves the interests of their big competitors. As the director of the Wisconsin Donor Network put it: "The redistribution of organs away from Wisconsin so as to ostensibly benefit the 'sickest' patients can be perceived to satisfy the business agenda of a few transplant centers which have encouraged unlimited growth in their waiting lists till they have outstripped the capacity of their community to meet their organ needs. This situation is exacerbated when these lists are heavily populated with out-of-area patients, many of whom could be transplanted quicker and with better outcomes in their home community."

The participants in this debate agree on a few points. One is that donors and their families should have no say in who receives organs. Doctors and bureaucrats regard this as so obvious that they never bother to justify it. In fact, it is far from obvious. Quite the reverse—given the intimacy of the gift, the donor should have a say.

One reason for HHS or the medical establishment to eschew criteria of moral worthiness in allocating organs is that such standards are highly subjective. Fine. Let multiple criteria be used, reflecting the views of multiple donors.

HHS is also making a moral judgment by establishing a standard of "sickest first." It is deciding that a small chance of a couple extra years for a cirrhotic senator is more important than a good shot at 40 years for a young person who contracted a rare liver disease while serving in the Peace Corps.

One can see why Congress would regard this as a reasonable set of priorities, but others are entitled to skepticism. "Sickest first" also means that more repeat transplants will be required and more recipients will die.

Every wasted organ means that someone else who might have lived won't make it. HHS's avoidance of considering "life years" or "quality of life" (instead of just "life") is ethical cowardice. To force patients to reach the brink of death before receiving a transplant out of fear that someone, somewhere might be willing to exercise moral responsibility lends new meaning to the term "dead hand of bureaucracy."

A donor might also be disturbed by the financial requirements for a transplant. He might decide to earmark an organ for a less-favored class of people on the condition that other players in the system cut their fees to make the operation affordable. If my liver were in shape to be useful to anyone, I would deem small-business operators and other poorly insured people at least as worthy as well-covered bureaucrats.

Another point so well accepted that it's rarely mentioned is the assumption that organ donors should not be paid. Even though everyone agrees that donation rates need to be raised, few are willing to consider how financial incentives might serve that cause. A lively debate on the issue is heating up in the academic literature, including the pages of the prestigious British medical journal *Lancet*, and is beginning to spill over into popular discussion.

The idea that it's offensive to discuss transplants in financial terms is droll, since the system is awash in economic calculations by medical centers, surgeons, health insurers—everyone except the donors.

In a current working paper, Julia Mahoney, an associate professor of law at the University of Virginia, notes that "given our current institutional arrangements, avoidance of market language is misleading and...even damaging," making it difficult "to comprehend what benefits are available and how they are distributed."

By trying to establish a single national distribution system, the federal government is moving in precisely the wrong direction. We don't trust central planning to deliver potato chips. Why should we trust it to deliver life-saving organs?

Contributing Editor James V. DeLong (jdelong@regpolicy.com) is an adjunct scholar at the Competitive Enterprise Institute and the author of Property Matters: How Property Rights Are Under Assault—and Why You Should Care *(The Free Press). His Web site is www.regpolicy.com.*

THE REASON STORE IS NOW OPEN!

ITEM #	PRODUCT DESCRIPTION	SIZE	PRICE
1	T-Shirt - 100% preshrunk cotton, black	L, X-L, XX-L	$12
2	T-Shirt - 100% preshrunk cotton, white	L, X-L, XX-L	$12
3	Jacket - Navy denim, 100% cotton	M, L, X-L, XX-L	$50
4	Shirt - Light denim, 100% cotton	M, L, X-L, XX-L	$30
5	Hat - Light blue, 100% cotton	Adjustable	$12
6	Pen - Laser engraved, comes with gift box		$10
7	Travel Bag - Black vinyl, multiple compartments	21"L, 12"H, 10"W	$30

All prices include sales tax and shipping/handling charges. No CODs. Allow 2–4 weeks for delivery. VISA AND MASTERCARD ACCEPTED FOR PHONE ORDERS AT 310-391-2245. Please mail form to: Reason Foundation, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034.

Item#	Qty	Size	Unit Price	Total
			Total Order	

Payment method:

☐ Visa #_____ Exp date_____

☐ MC # _____ Exp date_____

☐ Check enclosed payable to Reason Foundation

Ship merchandise to:

Name

Address

City

State, Zip

Phone

E-mail

Please visit our Web site at www.reason.com

Speaking Fees

It's Forbes vs. *Forbes* at the FEC.

By Allison R. Hayward

The Federal Election Commission has filed suit against Steve Forbes and Forbes Inc. for campaign finance violations during the publisher's 1996 presidential campaign. Forbes wasn't sipping coffee with shadowy foreign businessmen. Instead he wrote a biweekly column in *Forbes* magazine and had the audacity to discuss current events in that column. For this, the FEC, which claims it is so chronically underfunded that it has to dismiss most of the complaints it receives because it lacks the resources to prosecute them, has filed a complaint in federal court in New York claiming that, by publishing these columns, *Forbes* (the magazine) made an illegal contribution to Forbes (the candidate).

Interestingly, the FEC recently persuaded hostile appropriators in Congress to fully fund the agency's requested 1999 budget of $36.5 million (up from $31.6 million the previous year). To lead off 1999 with a case that is certain to draw attention to the commission's quixotic litigation strategies shows some nerve.

Did Forbes—or *Forbes*—violate the law? Federal law prohibits corporate contributions to federal candidates. Contributions may be in the form of money or in-kind services, such as the publication of a campaign advertisement. Corporate "expenditures" made in coordination with a candidate are also considered illegal contributions. Congress understood that this blanket rule could impose unacceptable restrictions on media activities, and so it made an exception to the definition of "expenditure" for news stories, commentaries, or editorials distributed by any broadcasting station, newspaper, magazine, or other periodical.

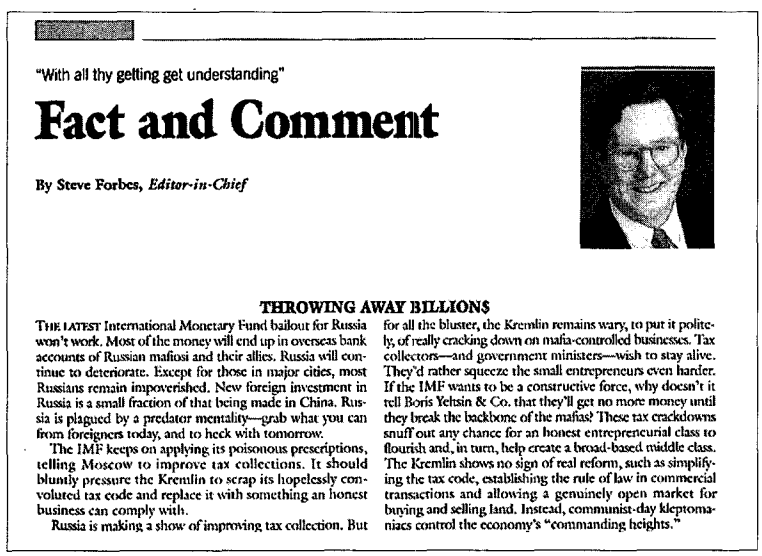
Fearing that this could in time become a loophole for political parties and candidates (who could establish newspapers or magazines to take advantage of the rule), Congress dictated that the exception would not apply to media outlets "owned or controlled by any political party, political committee, or candidate" unless the item in question represented a bona fide news account which was "part of a general pattern of campaign-related news accounts which give reasonable equal coverage to all opposing candidates."

According to the FEC's complaint, while a candidate for president Forbes disseminated his opinions about issues "on which he was also relying in his presidential campaign" in his "Fact and Comment" column in *Forbes* magazine. "Those issues included, among others, the flat tax, capital gains taxes, term limits, Bosnia foreign [sic], abortion, and the gold standard," says the complaint. The FEC argues that since Forbes (the candidate) controlled *Forbes* (the magazine), the cost of running these columns was a corporate political expenditure. Since articles written by Forbes (the columnist) were obviously coordinated with Forbes (the candidate), the FEC found that *Forbes* made an illegal contribution to Forbes. The commission, using mysterious precision, says the value of this contribution is "at least $94,900."

Forbes's campaign began in September 1995 and ended in March 1996. Counting the columns published in the month or two before he announced his candidacy, he had roughly 15 opportunities in "Fact and Comment" to flack his campaign. Did he?

Forbes indeed wrote about several of the issues the FEC identified in its complaint. He wrote about Bosnia twice. On October 23, he discussed partition of Bosnia and the role of NATO. On January 1 he urged that U.S. troops remain overseas no matter what happened in Bosnia. In neither article did he mention President Clinton, the Clinton administration, or any rival Republicans. Nor did he attempt to raise funds for his campaign.

On October 23, Forbes also mentioned his support of the flat tax in the context of simplifying the tax code, which he advocated as a way to decrease the invasiveness of the Internal Revenue Service. On September 25, about the time Forbes declared his candidacy, he wrote in support of a reduced tax rate on capital gains and of term limits as a way to reform Washington's "inbred political culture." Again, no opponents were criticized, or even named, in these commentaries, and no references were made to any election or to Forbes's candidacy. There was only one reference to the "gold exchange standard"—in a



"With all thy getting get understanding"

Fact and Comment

By Steve Forbes, *Editor-in-Chief*

THROWING AWAY BILLION$

THE LATEST International Monetary Fund bailout for Russia won't work. Most of the money will end up in overseas bank accounts of Russian mafiosi and their allies. Russia will continue to deteriorate. Except for those in major cities, most Russians remain impoverished. New foreign investment in Russia is a small fraction of that being made in China. Russia is plagued by a predator mentality—grab what you can from foreigners today, and to heck with tomorrow.

The IMF keeps on applying its poisonous prescriptions, telling Moscow to improve tax collections. It should bluntly pressure the Kremlin to scrap its hopelessly convoluted tax code and replace it with something an honest business can comply with.

Russia is making a show of improving tax collection. But for all the bluster, the Kremlin remains wary, to put it politely, of really cracking down on mafia-controlled businesses. Tax collectors—and government ministers—wish to stay alive. They'd rather squeeze the small entrepreneurs even harder. If the IMF wants to be a constructive force, why doesn't it tell Boris Yeltsin & Co. that they'll get no more money until they break the backbone of the mafias? These tax crackdowns snuff out any chance for an honest entrepreneurial class to flourish and, in turn, help create a broad-based middle class. The Kremlin shows no sign of real reform, such as simplifying the tax code, establishing the rule of law in commercial transactions and allowing a genuinely open market for buying and selling land. Instead, communist-day kleptomaniacs control the economy's "commanding heights."

Can't Help Himself: The FEC charges that journalist Forbes illegally contributed to candidate Forbes's presidential campaign.

paragraph about inflation, stating that Nixon took the dollar off the standard. One wonders why the FEC bothered including this issue in its complaint.

Since the FEC's theory emphasizes that Forbes controlled *Forbes*, why limit the analysis to these "Fact and Comment" columns? Under the FEC's logic, any other material published in the magazine during this period should also be fair game. Caspar Weinberger wrote about Bosnia twice (October 9 and December 18, 1995), Thomas Sowell discussed term limits in a September 11 column, and John Rutledge mentioned the gold standard and the flat tax in a November 6 column on the Phillips curve. Once the primaries began, it seems that not a jot was included by Forbes (the magazine *or* the candidate) on any of the issues the FEC sees as those "on which [Steve Forbes] was also relying in his presidential campaign."

Nor is there support for a claim that these commentaries were somehow timed to give Forbes's campaign a boost. The closest correlation appears to be that his comments about term limits were published in September, about the time he declared his candidacy, and his campaign's first media push (in October) also discussed this issue.

The editorial content of *Forbes* magazine during the Steve Forbes campaign, in short, reflected longstanding editorial positions in favor of growth, free markets, a sound dollar, and an internationalist foreign policy. To assert, as the FEC must, that these commentaries were a craven attempt to bolster the Forbes campaign through illegal corporate support is ludicrous.

Ludicrous *and* unconstitutional. Steve Forbes's role as a commentator cannot be shoehorned into federal campaign finance law simply because Forbes is both a journalist and a candidate.

The Supreme Court and a legion of lesser courts have held repeatedly that for speech to be "political enough" to trigger regulation, it must contain "express advocacy" for or against a clearly identified candidate. The "media exemption" rules cited at length in the FEC's complaint simply don't matter unless the commentaries advocated the election or defeat of a candidate. They didn't.

In the debate over campaign finance reform, much ink has been spilled over the last two years about the wisdom of the express advocacy standard. Critics have observed that it allows corporations, unions, and rich people to run "issue ads" that are designed to persuade voters to support or oppose a candidate but avoid federal regulation and reporting requirements by never stating so in clear terms.

In an effort to control such ads, campaign finance reformers in Congress, such as the supporters of the McCain–Feingold bill, would institute additional regulations for advertisements that name a candidate or for issue ads that appear within a certain period immediately preceding an election. Notably, Forbes's commentaries fall outside even *this* expansive proposal, since he named no candidates.

The FEC would require legal services entrepreneur Joel Hyatt and Steve Forbes to abandon their careers before either could seek office. While reformers complain that our political process should focus more on issues, the FEC demands that these candidates say less about the most salient topics.

Steve Forbes isn't the first individual to be confronted with the FEC's mathematics, which equate speaking about issues with campaigning. The FEC used this argument against Joel Hyatt, an unsuccessful 1994 candidate for the U.S. Senate in Ohio who is also the principal of Hyatt Legal Services, a law firm that advertises heavily on television.

The FEC concluded that Hyatt Legal Services television spots were—you guessed it—contributions from the company to Joel Hyatt. As the FEC's Office of General Counsel observed, several of the ads referred to health care and crime, which were "issues raised in the campaign."

Since Hyatt was a plaintiff's attorney, his trolling for claims among viewers with health problems or who had been victims of crime is hardly surprising. Nevertheless, rather than fight government lawyers, Hyatt settled this enforcement action at the administrative level for $11,000.

Apparently the FEC would require Joel Hyatt and Steve Forbes to abandon their private careers before either could run for office. In an era in which reformers complain that our political process needs to focus more on debating issues, FEC enforcers are demanding that these candidates say less about the most salient topics. How this would preserve the integrity of our electoral processes (supposedly the FEC's mission) is hard to understand.

By refusing to settle with the FEC's lawyers, Steve Forbes must now spend the time and money needed to defend himself against this assault on his personal liberties. In the process, he will be striking a blow for free speech.

Allison R. Hayward (ahayward@wrf.com) practices election and government ethics law at the Washington, D.C., law firm of Wiley, Rein & Fielding.

REASON Online

CRAVING ANOTHER ISSUE OF REASON?

Visit *Reason Online* on the Web today. The only cure for post-issue withdrawal.

- Read the latest columns and op-eds by your favorite *Reason* writers
- Check out our Breaking Issues for insight on hot topics in the news
- Join the e-mail list for *Reason Express*, our weekly newsletter
- Retrieve articles, interviews, and cartoons from back issues of Reason
- Tell us what's on your mind.

www.reason.com
A dose of Reason everyday!

Invitation to a Stoning

Getting cozy with theocrats

By Walter Olson

For connoisseurs of surrealism on the American right, it's hard to beat an exchange that appeared about a decade ago in the Heritage Foundation magazine *Policy Review.* It started when two associates of the Rev. Jerry Falwell wrote an article which criticized Christian Reconstructionism, the influential movement led by theologian Rousas John (R.J.) Rushdoony, for advocating positions that even they as committed fundamentalists found "scary." Among Reconstructionism's highlights, the article cited support for laws "mandating the death penalty for homosexuals and drunkards." The Rev. Rushdoony fired off a letter to the editor complaining that the article had got his followers' views all wrong: They didn't intend to put *drunkards* to death.

Ah, yes, accuracy does count. In a world run by Rushdoony followers, sots would escape capital punishment—which would make them happy exceptions indeed. Those who *would* face execution include not only gays but a very long list of others: blasphemers, heretics, apostate Christians, people who cursed or struck their parents, females guilty of "unchastity before marriage," "incorrigible" juvenile delinquents, adulterers, and (probably) telephone psychics. And that's to say nothing of murderers and those guilty of raping married women or "betrothed virgins." Adulterers, among others, might meet their doom by being publicly stoned—a rather abrupt way for the Clinton presidency to end.

Mainstream outlets like the *Los Angeles Times* and *The Washington Post* are finally starting to take note of the influence Rushdoony and his followers have exerted for years in American conservative circles. But a second part of the story, of particular interest to readers of this magazine, is the degree to which Reconstructionists have gained prominence in libertarian causes, ranging from hard-money economics to the defense of home schooling. "Christian economist" Gary North, Rushdoony's son-in-law and star polemicist of the Reconstructionist movement, is widely cited as a spokesman for free markets, if not exactly free minds; he even served for a brief time on the House staff of Rep. Ron Paul (R-Texas), the Libertarian Party presidential nominee in 1988, when Paul was a member of Congress in the '70s. For his part, Rushdoony has blandly described himself to the press as a critic of "statism" and even as a "Christian libertarian." Say what?

An outgrowth of Calvinism, modern Reconstructionism can be traced to Rushdoony's 1973 magnum opus, *Institutes of Biblical Law.* (Many leading Reconstructionists emerged from conservative Presbyterianism, but as with so much of today's religious ferment, the movement cuts across denominational lines.) Not one to pursue a high public profile, Rushdoony has set up his Chalcedon Institute in off-the-beaten-path Vallecito, California, while North runs his Institute for Christian Economics out of Tyler, Texas.

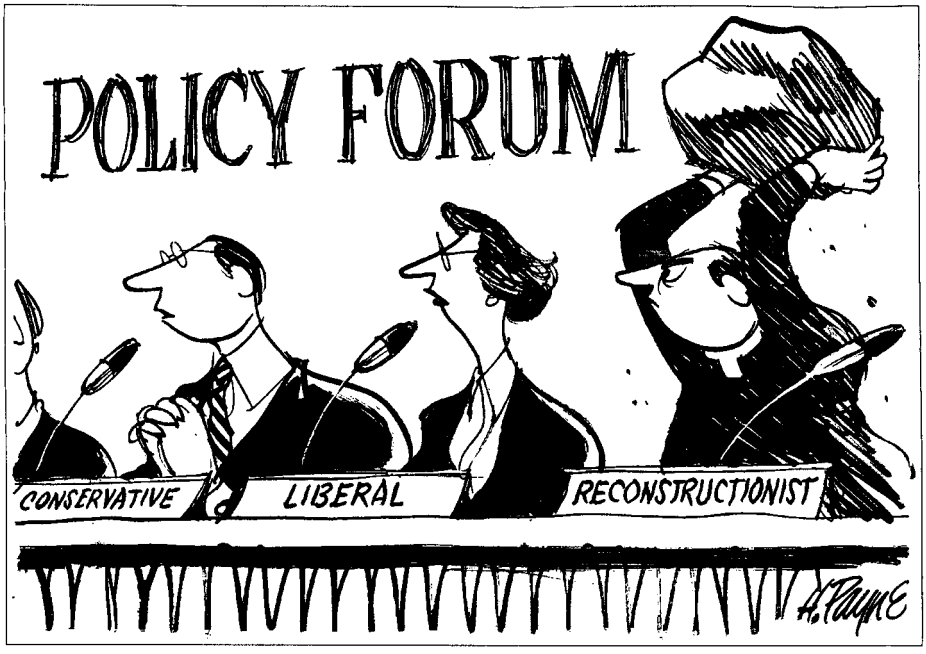
As a "post-millennialist" school of thought, Reconstructionism holds that believers should work toward achieving God's kingdom on earth in the here and now, rather than expect its advent only after a second coming of Christ. Some are in a bit of a hurry about it, too. "World conquest," proclaims George Grant, in what by Reconstructionist standards is not an especially breathless formulation. "It is dominion we are after. Not just a voice... not just influence...not just equal time. It is dominion we are after."

Well, OK, it's easy to laugh. Yet grandiosity does sometimes get results, especially when combined with an all-out conviction that one is historically predestined to win (the Communist Party in the '30s comes to mind). Reconstructionism has a record of turning out hugely prolific writers, tireless organizers who stay at meetings until the last chair is folded up, and driven activists willing to undergo arrest (Reconstructionist Randall Terry founded Operation Rescue, the lawbreaking anti-abortion campaign) to make their point.

Politically, Reconstructionists have been active both in the GOP and in the splinter U.S. Taxpayers Party; but their greater influence, as they themselves would doubtless agree, has been felt in the sphere of ideas, in helping change the terms of discourse on the traditionalist right. One of their effects has been to allow everyone else to feel moderate. To wit: Almost any anti-abortion stance seems nuanced when compared with Gary North's advocacy of public execution not just for women who undergo abortions but for those who advised them to do so. And with the Rushdoony faction proposing the actual judicial murder of gays, fewer blink at the position of a Gary Bauer or a Janet Folger, who support laws exposing them to mere imprisonment.

Among other ideas Reconstructionists have helped popularize is that state neutrality on the subject of religion is meaningless. Any legal order is bound to "establish" one religious order or another, the argument runs, and the only question is whose. Put the question that way, and watch your polemical troubles disappear. If we're getting a religious establishment anyway, why not mine?

"Why stoning?" asks Recon Gary North. "The implements of execution are available to everyone at virtually no cost." And "executions are community projects—not with spectators who watch a professional executioner do 'his' duty, but rather with actual participants."



"The Christian goal for the world," Recon theologian David Chilton has explained, is "the universal development of Biblical theocratic republics." Scripturally based law would be enforced by the state with a stern rod in these republics. And not just any scriptural law, either, but a hard-line-originalist version of Old Testament law—the point at which even most fundamentalists agree things start to get "scary." American evangelicals have tended to hold that the bloodthirsty pre-Talmudic Mosaic code, with its quick resort to capital punishment, its flogging and stoning and countenancing of slavery, was mostly if not entirely superseded by the milder precepts of the New Testament (the "dispensationalist" view, as it's called). Not so, say the Reconstructionists. They reckon only a relative few dietary and ritualistic observances were overthrown.

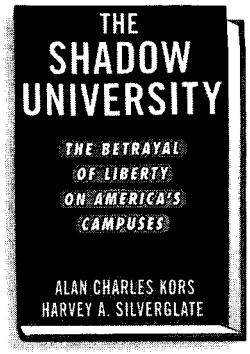
So when Exodus 21:15–17 prescribes that cursing or striking a parent is to be punished by execution, that's fine with Gary North. "When people curse their parents, it unquestionably is a capital crime," he writes. "The integrity of the family must be maintained by the threat of death." Likewise with blasphemy, dealt with summarily in Leviticus 24:16: "And he that blasphemeth the name of the Lord, he shall surely be put to death, and all the congregation shall certainly stone him."

Reconstructionists provide the most enthusiastic constituency for stoning since the Taliban seized Kabul. "Why stoning?" asks North. "There are many reasons. First, the implements of execution are available to everyone at virtually no cost." Thrift and ubiquity aside, "executions are community projects—not with spectators who watch a professional executioner do 'his' duty, but rather with actual participants." You might even say that like square dances or quilting bees, they represent the kind of hands-on neighborliness so often missed in this impersonal era. "That modern Christians never consider the possibility of the reintroduction of stoning for capital crimes," North continues, "indicates how thoroughly humanistic concepts of punishment have influenced the thinking of Christians." And he may be right about that last point, you know.

The Recons are keenly aware of the P.R. difficulties such views pose as they become more widely known. Brian Abshire writes in the January *Chalcedon Report*, the official magazine of Rushdoony's institute, that the "judicial sanctions" are "at the root" of the antipathy most evangelicals still show towards Reconstruction. Indeed, as the press spotlight has intensified, prominent religious conservatives have edged away. For a while the Coalition on Revival (COR), an umbrella group set up to "bring America back to its biblical foundations" by identifying common ground among Christian right activists of differing theological backgrounds, allowed leading Reconstructionists to chum around

HENRY PAYNE

"A wake-up call to any parents who believe—erroneously—that their children are enjoying true academic freedom."
—Charles Platt, *The Washington Post*

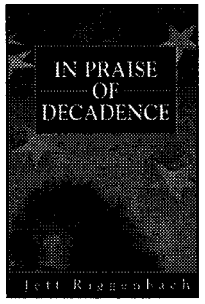


"An eye-opening and well-documented exposé...."
—Alan Dershowitz, Harvard Law School

"A massive, irresistible manifesto.... Convincingly argued, authoritatively documented in moving human detail, it is a momentous achievement."
—Christina Hoff Sommers, author of *Who Stole Feminism*

THE FREE PRESS
A Division of Simon & Schuster
A VIACOM COMPANY
http://www.SimonSays.com

IN PRAISE OF DECADENCE
Jeff Riggenbach



With a delightfully refreshing libertarian sense of the political right and left, Riggenbach exposes the myths and misinterpretations surrounding anarchism, liberalism, populism, and conservatism, as well as the term "decadence," which so many have used to describe various periods in our nation's history.

215 Pages • ISBN 1-57392-246-3
Cloth $21.95

At fine bookstores, or direct from
Prometheus Books
Call toll free (800) 421-0351 (24 hours)
59 John Glenn Drive • Amherst, NY 14228-2197
E-mail: PBooks6205@aol.com

ENEMY OF THE STATE
REPUBLICAN LIBERTY CAUCUS
1-800-752-9646
http://www.rlc.org
email: rlc@rlc.org
611 Pennsylvania Ave. SE #570 Washington, DC 20003

www.freedomtshirts.com
Freedom T's
T-shirts for freedom lovers
1-888-918-5132

Improve Your Spanish
Practice your Spanish reading world news, culture, business, science and more with *Perspectiva* or *El Puente*. Easier to read than imported magazines – it's almost like having a private Spanish tutor.

Read Spanish with more comprehension and less frustration!
•**Spanish** at *YOUR* level – boosts comprehension
•**Glossary** next to articles – improves vocabulary
•**Spoken Idioms** & **Grammar** – increases fluency
Perspectiva — Intermediate Spanish — $39: 12 issues, 24 pgs ea
El Puente — High-Beginning Spanish — $39: 22 issues, 8 pgs ea
SUBSCRIBE TODAY, or ask for your FREE BROCHURE with sample articles and sample glossary.
EDUCATIONAL NEWS SERVICE
PO Box 60478–RES
Florence, MA 01062-0478
E-mail: info@ednews.com
(800) 600-4494

with such figures as televangelist D. James Kennedy (whose Coral Ridge Ministries also employed militant Reconstructionist George Grant as a vice president) and National Association of Evangelicals lobbyist Robert Dugan.

In recent years, however, the COR has lost many of its best-known members; former Virginia lieutenant governor candidate Mike Farris, for example, told *The Washington Post* that he left the group because "it started heading to a theocracy...and I don't believe in a theocracy." John Whitehead, a Rushdoony protégé who, with Chalcedon assistance, launched the Rutherford Institute to pursue religious litigation, has moved with some vigor to disavow his old mentor's views.

Prominent California philanthropist Howard F. Ahmanson Jr., who has given Rushdoony's operations more than $700,000 over the years, may also be loosening his ties. According to the June 30, 1996, *Orange County Register*, Ahmanson has departed the Chalcedon board and says he "does not embrace all of Rushdoony's teachings." An heir of the Home Savings bank fortune, Ahmanson has also been an important donor to numerous other groups, including the Claremont Institute, the Seattle-based Discovery Institute and—just to show how complicated life gets—the Reason Foundation, the publisher of this magazine (for projects not associated with its publication).

The continuing, extensive Reconstructionist presence in fields like the home schooling movement poses for libertarians an obvious question: How serious do differences have to become before it becomes inappropriate to overlook them in an otherwise good cause? The printed program of last year's Separation of School & State Alliance convention constituted an odd ideological mix in which certified good guys such as Sheldon Richman, Jim Bovard, and Don Boudreaux alternated with Chalcedon stalwarts like Samuel Blumenfeld, Howard Phillips, and Rushdoony himself.

Lest such relations become unduly frictionless, here's a clip-and-save sampler of Reconstructionist quotes to keep on hand:

On the link between reason and liberty: "Reason itself is not an objective 'given' but is itself a divinely created instrument employed by the unregenerate to further their attack on God." The "appeal to reason as final arbiter" must be rejected; "if man is permitted autonomy in one sphere he will soon claim autonomy in all spheres....We therefore deny every expression of human autonomy—liberal, conservative or libertarian." Thus affirmed Andrew Sandlin, in the January *Chalcedon Report*.

Intellectual liberty (other religions department): Hindus, Muslims, and the like would still be free to practice their rites "in the privacy of your own home....But you would not be allowed to proselytize and undermine the order of the state....every civil order protects its foundations," wrote the late Recon theologian Greg Bahnsen. Bahnsen added that the interdiction applies to "someone [who] comes and proselytizes for another god or another final authority (and by the way, that god may be man)."

Intellectual liberty (where secularists fit in department): "All sides of the humanistic spectrum are now, in principle, demonic; communists and conservatives, anarchists and socialists, fascists and republicans," explains Rushdoony. "When someone tries to undermine the commitment to Jehovah which is fundamental to the civil order of a godly state—then that person needs to be restrained by the magistrate...those who will not acknowledge Jehovah as the ultimate authority behind the civil law code which the magistrate is enforcing would be punished and repressed," wrote Bahnsen.

On ultimate goals: "So let us be blunt about it," says Gary North. "We must use the doctrine of religious liberty to gain independence for Christian schools until we train up a generation of people who know that there is no religious neutrality, no neutral law, no neutral education, and no neutral civil government. Then they will get busy in constructing a Bible-based social, political and religious order which finally denies the religious liberty of the enemies of God." ◆

Contributing Editor Walter Olson (hambo @mags.net) is a senior fellow at the Manhattan Institute and author of The Excuse Factory: How Employment Law Is Paralyzing the American Workplace *(The Free Press).*

THE SWEET SMELL OF SUCCESS℠

PUNCH PUNCH

Punch Punch is its own best advertisement, 6 1/4" x 44 ring of perfection. Full-bodied but not harsh with Natural wrapper, it's preferred by those uncompromising leaders who strive for excellence. Handcrafted for those same people who insist on fine watches, fine wine, fine cars and above all, fine cigars.

MY INTRODUCTORY OFFER TO NEW CUSTOMERS

9 Punch Punch cigars for $15.00; Regular Retail $32.00.

THOMPSON CIGAR CO.

P.O. Box 31274 • Tampa, FL 33633-0537 • Dept. T918

Send me 9 Natural wrapper, Punch Punch Cigars **(N06444)** For $15.00 + $3.95 shipping. (Florida residents add 6% sales tax + appropriate county tax). **ONE ORDER PER CUSTOMER**

My Name

My Street Address Apt. #

City State Zip

Daytime Phone # ( )

❑ **$18.95 Enclosed. Charge to my** ❑ **VISA** ❑ **MasterCard** ❑ **AmExpress** ❑ **Discover**

Signed

Credit Card No. (Print All Digits) Exp. Date

OFFER EXPIRES 1/31/95 • OFFER NOT AVAILABLE TO MINORS • OFFER GOOD ONLY IN THE USA

1915 THOMPSON & CO., INC.

America's Oldest Mail Order Cigar Company. Est. 1915

© 1995, Thompson & Co., Inc.

LICEN
ELECTRONIC REPRODUCTION PROHIBITED

1-800-641-3796 Dept. T918 Fax: 813-882-4605

Dreams of Stagnation

By Ronald Bailey

False Hopes: Why America's Quest for Perfect Health Is a Recipe for Failure, by Daniel Callahan, New York: Simon & Schuster, 336 pages, $23.00

Life Without Disease: The Pursuit of Medical Utopia, by William B. Schwartz, Berkeley: University of California Press, 178 pages, $22.00

In *False Hopes*, Daniel Callahan stands athwart medical progress yelling "Stop!" His anti-technology, anti-freedom screed would be dismissed as the ravings of a Unabomber-style lunatic if it weren't for the fact that Callahan is the co-founder of The Hastings Center, a prestigious bioethics think tank in New York.

Borrowing the concept of "sustainability" from radical environmentalism, Callahan calls for "steady-state medicine." He imagines a future "in which a socially agreed upon proportion of the GNP is devoted to health care, with a set limit (which may be tacit as well as explicit); in which technological changes are slow to come and are rigorously screened for efficacy and affordability; in which changes in the health care system from year to year are relatively slight; in which budgets remain stable (allowed to increase only in proportion to an increase in the GNP or the rate of annual inflation); in which the public for the most part expects only slightly incremental improvement in the level and quality of health care; and in which further scientific gains are not deployed until earlier ones are fully utilized." In other words, the government should forbid medical advances that threaten to make some better off than others. Underlying this harsh prescription is Callahan's quest for "equity," coupled with a profound misunderstanding of economics.

CAT Scan Got His Tongue: What most call progress, Daniel Callahan calls disaster. "No longer is sixty-five thought to be a reasonable age after which death is not 'premature,'" he despairs. "No infant mortality rate, however low, is good enough."

Like many other allegedly deep thinkers in the area of health care, Callahan decries the growing percentage of the U.S. economy devoted to medical spending. This is much like deploring the fact that the automobile sector represents a much bigger share of the economy today than it did in 1910, or the fact that U.S. spending on computers has grown dramatically during the last decade. In the case of medicine, Callahan seems to believe that the additional benefits are not worth the cost. But in making that judgment, he is imposing his values on the patients who seek more and better medical care. He has decided that they are wrong.

Callahan blames rising medical costs on technological improvements. As an example, he notes that ultrasound imaging for prenatal screening, rarely used at first, is now routine. But that's because the cost of an ultrasound has fallen dramatically relative to wages.

Research conducted in recent years has also reduced the cost of ulcer treatments. Physicians now recognize that 90 percent of ulcers are caused by a bacterium. These ulcers can be cured with a combination of antibiotics and acid blockers such as cimetidine (Tagamet) and ranitidin (Zantac), avoiding the need for surgery. This development has saved billions of dollars and spared millions of people intense pain.

Yet it is precisely this sort of continual improvement in medical care that seems to upset Callahan. "The criteria for normality are constantly raised, keeping in step with medical possibilities," he complains. "No longer is sixty-five thought to be a reasonable age after which death is not 'premature.' No infant mortality rate, however low, is good enough. No ache or pain should go unrelieved if relief is desired. Most important, what would have been accepted as a decent level of health in one generation is unacceptable in the next." If it was good enough for granddaddy, Callahan implies, it should be good enough for you.

Callahan ignores the main factor underlying increases in medical costs since World War II: third-party payments. For decades, American patients have had little reason to worry about how much they spend on medical care, because someone else usually pays for it. Consequently, doctors and hospitals have little reason to control their expenses. Spiraling costs are the predictable result. The federal government helped create this situation by exempting employer-provided health insurance from wartime wage controls and from the income tax. It also added its own third-party payments through programs such as Medicaid and Medicare. Nowadays patients are accustomed to low out-of-pocket medical expenses, and big companies are expected to give their employees gold-plated health insurance policies.

When it comes to medical care, the whole idea of insurance—of protecting against *unexpected* losses—has been obscured. Think how expensive your car insurance would be if the cost of routine maintenance such as oil changes and tire purchases were included in your premiums. This is the problem with most health insurance policies today. Instead of insuring against large, unpredictable costs such as chemotherapy or a heart bypass, many policies cover what is essentially routine maintenance: flu shots, annual physicals, and so on.

Rather than unravel this dysfunctional system of third-party payments, American companies have turned to health maintenance organizations, which constrain both doctors and patients to keep costs low. Callahan says HMOs have been ultimately unable to control costs, so the government needs to step in. "A steady-state, equitable medicine will have to limit, not expand, patient choice," he writes. "It will require frank rationing. It will work to resist patient demands, particularly demands stimulated by market pressure and incentives."

Callahan does not even consider the possibility of using "market pressures and incentives" to control costs. Tax-free medical savings accounts (MSAs), for example, allow people to manage their own health care budgets to a far greater extent than third-party payment systems permit. MSA holders buy catastrophic health insurance policies with up to $2 million in coverage at remarkably cheap prices. My quarterly premium is just $215, less than my car insurance payments. Because I pay for routine medical care, I carefully inquire about prices and compare services before I buy.

Callahan is right when he argues that health is not the supreme value. But he does not seem to grasp that markets allow people to set their own hierarchies of values. One person might prefer to preserve the family fortune and pass it along to her heirs rather than spend it on medical treatments that extend her life by a few months. Another might prefer to buy an expensive new car rather than purchase comprehensive health coverage. Instead of embracing its potential to accommodate diversity, Callahan decries the market as "a notably goal-less institution."

Callahan clearly has a problem with such open-endedness. He treats people as interchangeable parts of a collective, suggesting that we "look at health in terms of the need to have healthy citizens in order that the institutions and groups of the society might function well." He argues that "coercive efforts to change unhealthy behavior" are justified because "bad individual health behavior...does harm to others, even if the health risk-takers pay their own health care costs. Money is diverted from other uses, personnel are diverted from other patients, and lives are wasted that could serve us all." By Callahan's reckoning, then, we cause "harm to others" when we spend money on expensive meals, fancy clothing, or any other purchase of which he does not approve. Perhaps we should all be compelled to eat at Burger King and shop at K-Mart for the greater good of society.

Callahan says decisions about health care "must be subject to public debate and politically ratified....The principle here is that what medicine can do for individuals will almost certainly have social consequences, and thus requires community approval." But everything has "social consequences" in the capacious sense meant by Callahan, including my preferences in soft drinks, magazines, and department stores. His "principle" leaves no room for private choice.

In the same vein, Callahan regularly lumps together choices made by consumers with choices made by governments. For example, he assumes that "developed countries will not be able to devote a steadily growing proportion of their gross national product (GNP) to health care...a limit will be set, politically and economically." This limit, he says, has almost been reached by many countries; there is "a growing public unwillingness to pay steadily higher prices or taxes for health care, or to devote an ever larger portion of national resources to the improvement of health care." Thus, Callahan conflates the willingness to pay higher taxes for other people's health care with the willingness to pay more for one's own. He assumes that "national resources" are to be allocated through a centralized political process; the idea that some resources do not belong to the government seems utterly foreign to him.

Not surprisingly, Callahan finds much to admire in European systems of socialized medicine. "Those countries began... with low expectations and a relatively ineffective medicine," he explains. "For Europeans, almost any level of health care was initially acceptable, whereas for Americans practically nothing that can be mentioned is ever quite adequate." He notes that "in Europe most allocation and rationing decisions have historically been made by politicians and experts working together in private, without much public knowledge, much less participation. This makes life considerably simpler for everybody." He approvingly observes that European medicine "has remained for the most part heavily paternalistic and authoritarian."

But even the Europeans, Callahan sadly notes, have been contaminated by "the quest for perfect health." His nostalgia is palpable. "If we had exactly and only the same range of technologies as were available twenty or thirty years ago, there would be no problem in equitably allocating resources," he writes. "We could readily afford that level of medicine and health care." (It would be even cheaper, of course, if we returned to using rattles and beads as remedies.) Callahan says political philosopher Daniel Sarewitz is "not far off the mark when he writes: 'Political and cultural institutions might find their goals better served by responding to [their] problems as if scientific and technological

progress had come to an end and the only recourse left to humanity was to depend upon itself.' "

Thus, Callahan would happily sacrifice human progress to achieve his egalitarian dream. For him, a growing economic pie gets in the way of redistribution because people can see that they are going to get more in the future if they don't stop progress. Beguiled by growing wealth and ever superior technologies, humanity foolishly rejects Callahan's vision of a stagnant but equal utopia. "If people have been tutored to look for progress without end and progress without final goals," he writes, "they have no less been tutored to think that whatever technology we have now, whether medical or automotive or communicative, is as nothing compared to what we will have, and deserve to have, in the future."

William B. Schwartz would wholeheartedly endorse that expectation. His book, *Life Without Disease: The Pursuit of Medical Utopia*, is almost diametrically opposed to Callahan's pessimistic rant. Schwartz, a professor of medicine at the University of Southern California and a fellow at the Pacific Center for Health Policy and Ethics, does not fear progress without end or goal. The aim of medicine is plain enough to him: "Our exploding knowledge of the genetic mechanisms of disease begins to make plausible the once impossible dream of a largely disease-free existence," he writes. "The possibility of a broad-based victory over disease and a dramatic increase in the human lifespan in the not too remote future must now be taken seriously. The reimagining of our medical future seems all the more important in light of growing scientific evidence that the aging process itself may be subject to medical intervention....Conceivably by 2050, aging may in fact prove to be simply another disease to be treated."

That's Schwartz's rejoinder to Callahan's insistence that humanity reconcile itself to disease and death. Instead of searching for the "meaning of death," as Callahan urges, Schwartz wants to conquer it. It is just this type of triumphalist medicine from which the crabbed spirits of Callahan and his ilk recoil. Citing recent and anticipated advances in treatment, Schwartz paints a plausible picture of a future where damaged heart muscle can be replaced by genetically modified cells to restore normal pumping action; where neuroprotective drugs preserve brain cells after a stroke; where genetically modified animal organs replace damaged kidneys and livers; and where new vaccines are developed as soon as microorganisms are identified as possible sources of infectious diseases.

Schwartz agrees with Callahan that health care was more affordable 50 years ago, but he points out the reason: "In 1950 costs of health care were remarkably low, because, for a large percentage of patients, doctors really couldn't do much. People spent relatively little on health care (only 4.4 percent of gross domestic product) and got what they paid for—very few useful diagnostic tests or effective treatments." This is the way that Callahan prefers to see it: "Before modern medicine, some peace was made with the finitude of the body—never a perfect peace, but one that allowed people to find some meaning in a life marked by disease and death." But as Schwartz says, what choice did they have?

"By the year 2050, the conquest of many diseases could be a reality," declares William B. Schwartz. "The resulting increase in longevity could bring into play an entirely new set of problems caused by generations of healthy humans who refuse to die."

Things are about to change drastically. "By the year 2050, the conquest of many diseases could be a reality and health-care costs brought under control," declares Schwartz. "The resulting increase in longevity, perhaps forty years or more, could bring into play an entirely new set of problems caused by generations of healthy humans who refuse to die." Though Callahan says citizens of developed countries live plenty long already, most people will be happy to deal with the problems caused by long, healthy lives.

Like Callahan, Schwartz is worried by the rising cost of health care, but he is not in thrall to Callahan's egalitarian lunacy. "I have espoused the unpopular idea that the rapid rise in health care costs resulting from our medical successes cannot be controlled without acceptance of painful but necessary limits on the availability of certain expensive treatments to some or all patients," he writes. He believes that "the view of medical care as an unlimited entitlement" is untenable.

In other words, Schwartz understands that just as some people can afford to eat at expensive French restaurants while others eat at McDonald's, so too some patients will be able to afford the latest biotechnological treatments while others will rely on more conventional and less expensive therapies. Patients who can afford cutting-edge treatments pave the way for future patients who will be able to take advantage of these new developments as they become more refined and cheaper. The first doses of penicillin, for example, were extremely expensive, but now the drug costs pennies per pill. Schwartz also understands that future generations will be much wealthier and thus will be able to afford even more expensive treatments than those contemplated now.

As Schwartz's book reminds us, individual choice has never been wider, and technological progress continues to accelerate. Meanwhile, voices of the old order like Callahan's are denouncing freedom and calling us back to lives of solidarity and simplicity. Fortunately, they are opposed by researchers like Schwartz, who are working hard to help fulfill the desires of people everywhere to live healthier and happier lives.

Though he sees it as cause for despair, Callahan is right about one thing: "The dream of medical progress does not have any logical or obvious endpoint or any intrinsic constraints." Thank goodness.

Contributing Editor Ronald Bailey (rbailey21@aol.com) is editing Earth Report 2000: The True State of the Planet Revisited, *which will be published by McGraw-Hill next year. His documentary* Faith & Reason *was recently broadcast on PBS.*

Judges in the Dock

By Stephen F. Williams

Out of Order: Arrogance, Corruption and Incompetence on the Bench, by Max Boot, New York: Basic Books, 252 pages, $25.00

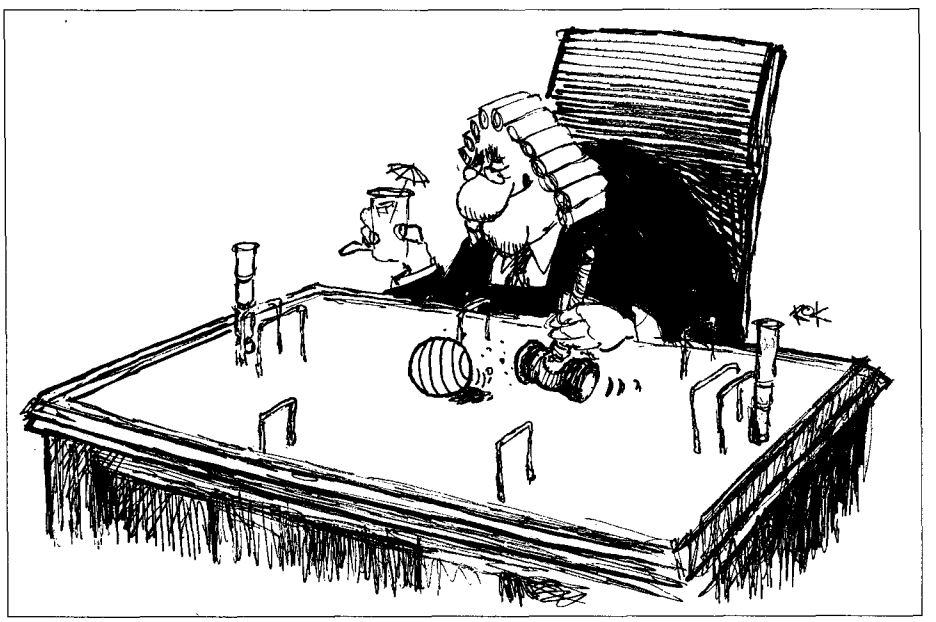
Most analysis of the judicial function proceeds on a rather highfalutin level, with subtle and imponderable contentions about comparative institutional capacities floating back and forth. The contestants act in the belief that if we manage to understand these capacities, we'll be able to define a role for the courts, especially in their potentially dangerous task of reviewing legislation for constitutionality.

Max Boot's *Out of Order* does not engage much in this interminable debate. Instead Boot, editorial features editor at *The Wall Street Journal*, gets down and dirty, asking what real live judges actually do. The answer is grim: There are lots of fools and knaves out there, wielding the power of the state in stupid, destructive, abusive, and malicious ways. Boot tracks these jurisprudential monsters through virtually every branch of the law.

In doing so, he helps right the balance between lawyers and judges in the court of public opinion. Public esteem for lawyers is dismally low, apparently reflecting a judgment that all the plagues of the court system should be laid at their door. But it is the judges who make the rules and run the system, and Boot rightly argues that much of the responsibility is theirs.

The anecdotes of incompetence and villainy in *Out of Order* go on and on; indeed, that is the fun of the book. We have the judge who refuses to remove a vehemently prejudiced juror; the one who forces a prison system to provide inmates with "hot pots" in their cells; the one who, supposedly to remedy racial discrimination, orders a state to invest millions in a magnet school that must include a 2,000-square-foot planetarium; the one who gives probation to a juvenile who participated in a bloody murder by supplying the gun and helping dispose of the body. This is quite a rogues' gallery.

But the reader is bound to ask, What's new? Is there any reason to think that judicial competence has declined in recent years? Surely there have been fools and knaves on the bench for a long time. There is the very old story, presumably apocryphal but nonetheless suggestive, of the English trial judge so prone to error that an appellate opinion reversing him began, "The decision below is by Judge X, but there are additional grounds for reversal." Boot himself quotes the familiar riddle, "What do you call a lawyer with an IQ of 80?" The answer: "Your honor."



CHIP BOK

Although judicial folly and knavery are not easy to quantify, there are structural reasons to suspect that both are on the rise. During the last 40 years, the proportion of lawyers in the population has doubled, and the number of judges has followed suit. For example, there was one federal judge for every 560,000 people in 1960 and one for every 300,000 in 1993. Unless the share of the populace with the attributes necessary for good judging has risen equally, or the relative attractions of the field have increased, the system must be relying on an increasing proportion of ill-suited people.

It seems unlikely that the percentage of people who combine integrity, fairness, learning, and reasoning ability has been skyrocketing. Furthermore, caseload increases have made the job less rather than more attractive; no longer can a federal judgeship be thought of as simply an honorable retirement. Pay generally does no more than keep pace with inflation, and rather erratically at that. Meanwhile, the increased demand for reasoning skills throughout the economy has raised the opportunity cost of being a judge.

In one respect judging may have become a more appealing task, but it is not one that is likely to increase the quality of judges. As the Supreme Court has constitutionalized additional areas of law, and as it, together with lower courts, Congress, and state legislatures, have created new fields for judicial monitoring of the workplace and other realms that used to get along without intense judicial supervision, the chance for judges to throw their weight around has increased dramatically. This may enhance the appeal of judgeships, but probably not for persons with generous helpings of integrity, fairness, learning, and reasoning ability.

Is there a message in this for the law professors who conduct the lofty debate on the proper judicial role in constitutional interpretation? The professors, of course, hold few illusions about Supreme Court justices: They know in their bones that the justices are not as smart as they, and in many cases they are doubtless right. But the professors believe that if the principles governing constitutional law could be

understood properly (i.e., if their views were accepted), even the current justices could manage the system tolerably well.

Let's assume the professors' optimism is justified. At some point they ought to confront the legal world below the Supreme Court. As the proportion of human activities subject to judicial management grows, there will be more need for judicial troops out there on the front lines, making factual findings that can be reversed only if "clearly erroneous" and making legal decisions that are never even reviewed because the loser's potential gain is not worth the cost of an appeal. The quality of many of those front-line troops will fall far below that of Supreme Court justices. Though the Court may be able to correct most of the more extreme misinterpretations of its work, many will slip through. As one federal appellate judge famous for the frequency of his reversals by the Court is reported to have said, "They can't catch me every time." Boot performs a useful service in highlighting this problem.

The book is slightly schizophrenic in that it wanders between examples of incompetence and corruption, almost always involving the lower courts, and examples of arrogance, a more pervasive and ultimately perhaps more dangerous failing. In the lower courts arrogance takes various forms, from demanding preposterous kowtowing by counsel to giving the Supreme Court's constitutional interpretations extravagant readings that plunge the judge into management of problems that belong in the hands of the politically responsible (as with the prison hot pots and school planetarium). At the Supreme Court level the problem of arrogance involves milder versions of the same readiness to supplant political solutions based on wispy constitutional theories.

It cannot be said that Boot offers any rigorous new approach that would intelligibly cabin judicial discretion. And his tendency to drift back and forth between the Supreme Court's actual rulings and lower courts' extravagant or nonsensical applications weakens his case. While the Court should bear in mind the risk of misapplications, it is unfair to treat them as if they were part of the doctrine.

There is one respect in which Boot's focus on the judiciary may let the bar off too easily (though he includes much of the raw material for an indictment of attorneys). In states with elective judiciaries, heavily beholden to lawyers for campaign funds, courts have struck down attempts at tort reform based on highly imaginative state constitutional doctrines. Here it may be appropriate to see the judges mainly as the lawyers' agents, protecting their opportunities to use the legal system for lucrative wealth transfers. While the courts may fairly be criticized for assuming this role, that shouldn't let the lawyers off the hook.

Many of the solutions that Boot offers fit into the "we should all do better" category. We should pick better judges; the politicians involved in judicial selection should act more responsibly, at least looking at the track record of sitting judges being considered for appointment to higher courts. Of course we should and they should. But the forces that make politicians neglect these issues—such as the absence of any large political payoff from insisting on high quality, and the fact that the pickers themselves may not be jurisprudential giants—are hard to overcome with exhortation. Moreover, to the extent that the problem is an arrogant displacement of either private ordering or legislative choice, it is unclear that greater scrutiny by the selectors will help. If they share the assumptions that underlie what Boot calls the "juristocracy," more attention to selection may just yield more-skilled juristocrats.

Implicit in *Out of Order* is a fundamental approach: the thought, which will be congenial to REASON readers, that the courts have wrested far too much power away from systems of private ordering, most obviously markets.

Based on the old saw that daylight is the best disinfectant, Boot argues that cameras in the courtroom would chasten the worst judges. But there is also the risk that the extra exposure will bring out the worst in the pretentious and arrogant people who seem to make up a hefty portion of the bench. Some of Boot's proposals are even more naive. He suggests that Congress might, without a constitutional amendment, require a two-thirds majority of the Supreme Court for any decision to invalidate a statute. His theory: Congress controls the number of Supreme Court justices and could make the number three; if it were to make the number three, then a two-thirds majority would be necessary as a matter of arithmetic; ergo, Congress can specify a two-thirds majority regardless of the number of justices it ordains. Without trying to evaluate the constitutionality of such a statute, I think one can safely call this reasoning flaky.

Boot makes one point, however, the mere assertion of which is surely valuable: He trashes the notion, carefully fostered by the American Bar Association, that judges should be above political denunciation. This stance is especially hypocritical for the ABA, which wholeheartedly favors a swashbuckling brand of constitutional interpretation under which judges would enshrine the left's currently favored doctrines. I'm not sure how many observers of the bench are holding back on account of the ABA's precept. But if there are some, and they read *Out of Order*, they will surely now cut loose a barrage of pent-up criticism.

Implicit in the book is a more fundamental approach: the thought, which will be congenial to REASON readers, that the courts have wrested far too much power away from systems of private ordering, most obviously markets. But a libertarian looking to the book for a careful exploration of this idea will be disappointed. Theory, whether of political economy or of the narrower field of defining the judicial role, is not Boot's strong suit. At least not in this book.

So read it and weep. Or laugh, depending on your disposition. *Out of Order* will give you a visceral sense of the judicial establishment's dregs, without which you cannot realistically appraise the whole.

Stephen F. Williams (stephen_f_williams@cadc.uscourts.gov) is a judge on the U.S. Court of Appeals for the District of Columbia Circuit.

Straussed Out

By Loren E. Lomasky

Leo Strauss and the American Right, by Shadia B. Drury, New York: St. Martin's Press, 239 pages, $35.00

Ask 10 Americans what they take to be the importance of Leo Strauss to American culture, and nine will respond with a blank look and a shrug. The 10th will point with pride to his double-riveted jeans.

Close, but no cigar. This Strauss, like his namesake Levi, was a German-Jewish emigré who brought to his adopted country tools and techniques to tailor the frayed fabrics of American garb. The vestments with which Leo Strauss (1899–1973) was concerned, however, were intellectual rather than mall-type paraphernalia. Specifically, he may have been this century's most profound critic of the adornments of modernity. There is, he argued, a fatal flaw concealed in the rationalistic optimism of the Enlightenment project, and its ramifications have been made manifest by the twin scourges of National Socialism and Leninism. Diagnosis of the malady was his life's work—diagnosis and intimations concerning appropriate therapy. But although politics was Strauss's passion, his pursuit of the political was indirect and abstruse. He had no time for party pronouncements or the policy scuffles of the day. Rather, his method was to offer exceedingly close readings of classic philosophical and theological texts and to attempt to elicit from them the political prerequisites necessary for human beings to live well together.

Strauss is best known—indeed, notorious in various academic circles—for claiming that the great philosophers of antiquity and the medieval world wrote in a sort of code so as to disguise their real meaning. They did so, he argued, for two reasons. First, they might thereby hope to escape persecution for views deemed harmful or heretical by those possessing a power to impose penalties (think of Socrates' cup of hemlock). Second and more fundamental, these evasive prose maneuvers were designed to transmit truths to those capable of advantageously knowing them without simultaneously planting in the less able ideas which would bear pernicious fruit. The classical thinkers, said Strauss, deemed the philosophical task to be not merely the construction of ever more refined chains of syllogistic reasoning but rather the doctoring of souls. Complicating this task, though, is the fact that people are a disparate lot. The wise and the good are few, the unwise and morally mediocre many. As with a physic for the body, a potion restorative to one sort of patient can prove deadly to another.

The dilemma thereby posed is not so acute within the realm of oral transmission of knowledge; the master can impose a selective student admissions policy. Even there, however, it is impossible to control completely who might be eavesdropping and to whom secondhand reports of one's remarks might be transmitted. (Recall again the case of Socrates, who, though not publishing, nevertheless perished.) But when doctrines are reduced to writing, access is virtually impossible to control. The solution, argued Strauss, was to write in a way that would allow entry into the heart of the argument only to those who possess virtues of intellect and character adequate to the gravity of the issues broached therein. On the Straussian account, classical philosophical writing is a sword in the stone, a child-proof medicine bottle cap designed to keep out the unworthy

Cryptic Messenger: Leo Strauss, perhaps the century's most acute critic of liberalism, is notorious in some circles for claiming anicent and medieval philosophers wrote in a sort of code.

In Strauss's view the laudable discretion of this tradition began to erode during the Renaissance. With Machiavelli, Hobbes, Locke, and the great tsunami of Enlightenment liberalism, it broke down altogether. Now plain speaking rather than cautious concealment became the favored philosophical style. And why should it not be? Hadn't the presumptions of the natural aristocracy of the ancients been shattered by the realization that all men are created equal? Could it any longer reasonably be maintained that there exists some justifiable basis for structuring civil society other than the consent of the governed? An intellectual paternalism that withheld enlightenment from

UNIVERSITY OF CHICAGO

the many so that it could remain the preserve of the fortunate few was seen to be morally bankrupt. The watchword of modernity was universal education, whereby first the intelligentsia but then wider and wider circles of the populace would be unshackled from superstitions of religion, ideology, and morality.

The problem with this Enlightenment project, Strauss suggested, is not that it was vain but that it succeeded all too well. It stripped from ordinary folk the Noble Lies that had afforded them security and a sense of purpose within which decent lives could be constructed. It did not, *could not*, substitute in their place yet nobler truths. Instead, the resulting moral vacuum was filled by peddlers of nostrums and illusions far more toxic than the myths the modern thinkers had undermined. It was no accident that the great obituarist of modernity's pretensions, Martin Heidegger, declared that the vitality that two millennia of philosophy had sucked out of the human spirit was to be restored to the *Volk* through immersion in the death-dealing and thus life-affirming will of the *Fuhrer*.

Strauss garnered a remarkable popularity among the best and brightest students passing through the University of Chicago, his refuge after fleeing tempest-tossed Europe. As Shadia B. Drury reports in *Leo Strauss and the American Right*, he supervised over 100 doctoral dissertations of students attracted by his rejection of the democratic, leveling tendencies of the age and his affirmation that the ideas of the intellectuals matter tremendously—indeed, that nothing else matters as much. Such pandering to young people's taste for elitism is one of the counts of the indictment handed down in Drury's book. There is some justice to the charge—like the philosophers about whom he lectured, Strauss too was an adept handler of students' souls—but Drury's is a rendition of the siren's song that leaves out the music.

Unlike so many contemporary undergraduates, those who found their way to Strauss's classrooms were nominally literate, but what he taught them was *to read*. It was not so much the doctrines extracted from the classical texts that appealed to students. Rather, it was the dazzling process of identifying nuances of word and structure that could enable one to pry open previously locked intellectual doors, indeed that allowed one to see them as doors rather than as one continuously impermeable wall. Strauss was an interpretive virtuoso, and it was the virtuosity that drew students to him, not merely some vulgar confirmation of their self-serving prejudices. Unlike most academic stars, Strauss rarely pronounced in his own name; instead he allowed the texts to be heard in their own voice. Nowhere else did they sing so sweetly, with such eloquent purity. One can legitimately argue that the Strauss-orchestrated songs were more seductive than sensible, but that is not Drury's tack. Rather, what she puts forth to validate her critical credentials is earnest tone deafness.

In other respects too this book is misleading. Both its title and a dust jacket that pairs photos of Clarence Thomas and Newt Gingrich with one of Strauss suggest a preoccupation with the Straussian roots of the Republican Party's radical right. That, though, is a relatively minor component of the critique. Thomas and Gingrich receive only passing mention in the text. Strauss's seminal contributions to the thought of Harry Jaffa, Allan Bloom, and Willmoore Kendall are instructively spelled out in some detail, but these are at best peripheral players in any debates currently roiling Capitol Hill. With her discussion of Irving Kristol and neoconservatism Drury is on surer ground, but nowhere does she acknowledge that, for better or worse, the neocons are significantly outnumbered on the American right by traditional conservatives and even by classical liberals.

Shadia Drury is outraged by what Strauss says, what he intimates, and what he disclaims but is really nonetheless thinking. All this she wishes to root out. By comparison, Kenneth Starr is almost cozy in his regard for President Clinton.

This rather sensationalistic slant is, I suspect, less a strategy for selling more copies than an attempt to differentiate this volume from Drury's 1988 book, *The Political Ideas of Leo Strauss*. In that earlier volume she deconstructs Strauss's claim to be a champion of tradition against modernity, finding him instead a somewhat coarse Nietzschean. That attack is continued here, as Drury accuses Strauss of equating contemporary America's plight with the degeneracy of Weimar Germany, points to manifold affinities between Strauss and existentialist-cum-Nazi-apologist Heidegger, argues that Strauss's seemingly reverential treatment of Jewish theological texts in actuality is meant to undermine the foundations of religious belief, and charges that the so-called secret of the philosophers is: Everything is permitted.

In each case there is something to the allegation, but none is made to stick. It is true that Strauss on occasion was gloomy concerning America's prospects for ultimately avoiding the descent into barbarism that enveloped Germany and Stalin's empire, but this was a pessimism shared by many emigré intellectuals (including F.A. Hayek) and homegrown anti-communists (such as Whitaker Chambers). As for the Heideggerian connection, points of alleged agreement are less evidence that the two men were co-conspirators than they are expressions of Strauss's conviction that Heideggerian nihilism is not some inferential slip along the way but represents instead the ineluctable slide from Enlightenment optimism to postmodern despair. In this, as with his pessimistic streak, he may have been mistaken, but neither can reasonably be construed as an episode of bad faith.

Nor should that tag be pinned on his alleged subversion of traditional Jewish motifs. Drury hauls out at some length Strauss's remarks on the Jewish predicament past and present, focusing especially on his interpretation of the great medieval Talmudist and philosopher Moses Maimonides. She triumphantly brings to a head her indictment of Strauss's scholarly impiety with the observation that "according to Strauss, Maimonides does not even

think that philosophy can prove the creation as opposed to the eternity of the world." But this proposition about creation's unprovability, rather than being some far-fetched interpretive invention by Strauss, is the explicit central thesis of Maimonides's *Guide to the Perplexed.* Attributing it to Maimonides is every bit as controversial as ascribing to Thomas Jefferson a belief in the existence of certain inalienable rights. And as with Jefferson's pronouncement, it is integral to a sort of declaration of independence.

The argument that a temporal creation of the world cannot be logically demonstrated is by way of declaring the autonomy of natural reason from dogmas of revealed religion. Maimonides is deeply scornful of the ayatollahs and rabbis who have twisted and bent logical reasoning in supposed service to the articles of faith. If science cannot demonstrate what faith affirms, then so be it, concludes Maimonides. Neither is properly subsidiary to the other. They are not antagonists locked together in a fight to the death but rather are the twin pillars on which any decent and stable society must rest. The Maimonidean argument amounts to a rejection of both fundamentalism and supercilious secularism. No wonder Strauss is so taken by this aspect of the great rabbi-philosopher's thought. Drury's attempted exposé betrays a serious misunderstanding of both thinkers.

One confusion generates another. The autonomy of philosophy is not, *pace* Drury, an assertion that "anything goes." The pursuit of wisdom may free one from intellectual subservience to the half-truths, patriotic myths, and Noble Lies on which civil society and conventional morality rest, but that does not release one from obligations to one's fellow citizens. Rather, it affords to those obligations a deeper grounding. Most incumbent of all is the duty not to undermine promiscuously the moral pilings which one may no longer lean on oneself but which others do. Philosophy, for Strauss (and Maimonides), is a permissible activity, it is an activity splendidly rewarding to its practitioners, but it is also socially therapeutic and hedged with duties every bit as solemn as those ascribed to medical practice by the code of Hippocrates. The first of these is: Do no harm.

Strauss is avowedly not a liberal; he may well be this century's most acute critic of liberalism. Although there is much that contemporary liberals would do well to learn from Strauss, his theoretical fortress remains open to storming by the inheritors of Locke and Mill. It is from the perspective of liberalism, albeit one more democratic-egalitarian than libertarian, that Drury launches her assaults against Strauss. Although she lands some accurate shots, the ratio of hits to misses is conspicuously smaller than should be expected from an obviously intelligent and sophisticated critic intimately familiar with her quarry. Why the failure to aim better?

I believe that Drury is undone by the intense animus she holds toward Strauss and all that is associated with him. She is outraged by what he says, what he intimates, and what he disclaims but is really nonetheless thinking. She dislikes his influence on students and their subsequent influence on the body politic. All this she wishes to root out. By comparison, Kenneth Starr is almost cozy in his regard for President Clinton. The result is a marksmanship that is too much that of the cheap shot.

Such anti-Straussian resentment is by no means uncommon in the political science community. It invites a comparison. The only other 20th-century American social thinker similarly effective in gathering a string of devoted disciples and disciples-of-disciples while acquiring an equivalent but opposed bloc of despisers is that other notorious emigré, Ayn Rand. In many respects, of course, the two could not have been more different. Strauss was a scholar of the arcane, Rand a producer of blockbusters; Strauss lived all his life in the academy, Rand was more at home in Hollywood than Harvard; Strauss almost always spoke as the interpretive mouthpiece of other men's texts, while Rand's pronouncements were, without exception, offered as her own authoritative dicta. Perhaps the most important difference is that Strauss's disciples were scholastics-in-training, while Rand was most effective in capturing the allegiances of adolescents who found the world outside of her works impossibly small and tedious for them to reside in. I do not believe that Strauss and Rand ever met, but had they been acquainted each would, I am sure, have held the other in contempt.

Despite that gulf of differences, the one abiding similarity matters more. Like Strauss, Rand could win over not only the rational faculties but also the spiritedness of devotees. Each thinker purveyed a worldview in which emotion as well as intellect was permitted to soar. Philosophy became, for Straussians and Randians alike, a profoundly erotic activity. It is, I believe, this *eros* rather than the doctrines per se that most alarms critics. Few things are more unnerving than zeal matched to a comprehensive and unsettling view of the way the world works. Christianity in its early, subversive phase generated an ample quantity both of adherents whom only death could separate from their faith and antagonists notably keen to bring about just that separation. Opponents of Strauss and Rand employ means less sanguinary than the cross and Coliseum lions but are no less keen to expunge the intolerable.

The critics' zeal is itself excessive. Yet they have a point. *Eros* is a jealous passion, pushing away the unlike as ardently as it cleaves to the like. Straussians and Randians are both notorious for their cabals, for scornful rejection of the possibility of actually learning something from those who affirm opposite views, for endlessly repeating mantras that satisfy those within the circle but sound like so much gobbledygook to those outside. And both periodically break off into sub-cults anathematizing and waging internecine war against wayward brethren. (Again, the comparison to early Christianity is revealing.)

Drury is surely correct in this regard: Strauss and the Straussians can be infuriating. Nonetheless, they may have latched onto important insights that are completely invisible to intemperate critics. The same, *mutatis mutandis,* can be said for Rand and the Randians. Extremes of partisanship one way or the other explain why treatments of either rarely strike the mean between slavish devotion and hectoring denunciation. *Leo Strauss and the American Right* is, unfortunately, no exception.

Contributing Editor Loren E. Lomasky (llomask@opie.bgsu.edu) teaches philosophy at Bowling Green State University and is the author of Persons, Rights, and Moral Community *(Oxford).*

Bull Clinton

The man, the myth, the way of lie

By Thomas W. Hazlett

The Clinton administration has contributed mightily to American civic life. Indeed, in spurring a long overdue debate regarding what precisely constitutes "high crimes and misdemeanors," our president can claim credit for tripping yet another "national conversation." He has reinvigorated popular interest in the words and meanings embodied in that most remarkable document, the U.S. Constitution. How refreshing it is to hear impressionable young school children, curious about original intent and brimming with knowledge about the affairs of state, excitedly passing on the most minute details of presidential leadership. Another kudo for the "most ethical administration in history."

This rosy scenario seems inappropriate to those who cannot forgive the president for the little trick he played on the public. Lying, after all, is a no-no. But he didn't really *intend* to lie. You—I'm talking to you, Mr. and Mrs. America—made him do it. Clinton campaign consultant and spiritual counselor Dick Morris spoke to the president just after the Lewinsky matter broke in January and assures us that Clinton *seriously considered* telling the truth about the whole affair—until the poll numbers came in.

"If [the American people] feel that you lied under oath, and they feel that you suborned perjury in any way, you're cooked," Morris said he told Clinton. "Forgiveness won't work."

January polls indicated a confession would indeed be politically devastating. By August, polls indicated the truth was pretty much of a yawn. But the real windfall was that Clinton's political sleaze factor—bargaining for Chinese campaign cash, the rate card on the Lincoln Bedroom, a Cabinet that qualifies for a volume discount from defense attorneys, the litany of scandal stretching from Arkansas futures to stolen FBI files—had been blasted off the public's radar screen.

The truth has never tested very well for Clinton, and his abilities as a statesman have been most spectacular when crafting cover stories for actual public policy. In 1993, Clinton failed to deliver his promised middle class tax cut, and the country's recovery sputtered: First-quarter gross domestic product growth fell nearly to zero, and full-year growth barely matched that of 1992, the year dubbed by candidate Clinton as showcasing "the worst economy in 50 years."

That was also the year in which a Republican filibuster nixed the president's magic economic elixir, $16 billion in government infrastructure "investments." In 1995, Clinton's Office of Management and Budget was projecting $200 billion deficits into the next millennium.

Budget surpluses and robust economic growth coincide with the Republican congressional era (the creation of which Clinton *can* take credit for). These real accomplishments occurred while the president engaged in recreational demagoguery over minimum wages, school uniforms, and Social Security "reform."

The observation by Sen. Bob Kerrey (D-Neb.) that the president is an "unusually good liar" may yet be borne out, especially if one takes into account degree of difficulty. While many of our maximum leader's mendacities have landed him in a hot tub of job-security risks, he has continued to sell both the elites and the Boobosie the incredible line that diddling employees, lying under oath, and directing a lengthy and costly government campaign to cover-up a string of falsehoods is a matter to be adjudicated not by the public or the legal authorities, but by his wife. "If Hillary forgives him, then it's none of our business," the man on the street recites.

Of course, if the Clinton affairs were truly none of our business, then it would not matter one whit if his wife forgave him. But in the soap opera that is the Clinton presidency, Ms. Rodham-Clinton—issuing hourly press releases on the state of her forgiveness process—has been propped on stage as judge and jury to render a verdict on the abuse of office to whom she is married.

To Bill Clinton, the bright line which marks his "private life" is as imaginary as the stories he poll-tests when choosing what to testify to under oath. Not only does our president drag us, kicking and screaming, into the world of Hillary and Chelsea and Buddy and Socks, his *official* acts are what prompted this whole "private" mess.

The president claims to be the victim of an out-of-control independent prosecutor. A prosecutor that is mandated by the very 1994 law his party passed, and he signed, over the strenuous objections of the "vast right-wing conspiracy." The Paula Jones suit, the embarrassing stain which the king could not quite make disappear fast enough, is the sort of case trial lawyers claim as an inalienable right; who has been a greater champion, or richer PAC recipient, of the litigation lobby than the president?

Clinton has reveled in the trappings of power, and via his actions has bared his soul. Not much there. He used his office to get chicks and have kicks; he lied, he obstructed, he conspired. The system did indeed motor on pretty efficiently without him; perhaps his diddle time spared us from another Health Care Plan or two.

America must now decide how egregious an offense it is to turn the White House into Animal House and reach a consensus as to which felonies constitute behavior unbecoming a president. High crime? Misdemeanor? Oh, how masterfully Clinton has set the national agenda in the year of our lord, 1998. ◆

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) teaches economics and public policy at the University of California at Davis.

FELIX MORLEY JOURNALISM COMPETITION

1st Prize $2,500

2nd Prize $1,000

3rd Prize $750

Runners-up $250

APPLICATION DEADLINE DECEMBER 1, 1998

Felix Morley was a Pulitzer Prize-winning editor of the *Washington Post* from 1933-1940. At the height of the New Deal and postwar anti-communism, Felix Morley emphasized private property, voluntarism, and a noninterventionist foreign policy. **Felix Morley Journalism Competition** prizes will be awarded to outstanding young writers who demonstrate appreciation of a free society. Submit articles published in student newspapers or other publications between July 1, 1997 and December 1, 1998.

HUMANE STUDIES FELLOWSHIPS

OF UP TO

$12,000

will be awarded to undergraduate and graduate students for the 1999-2000 academic year

APPLICATION DEADLINE DECEMBER 31, 1998

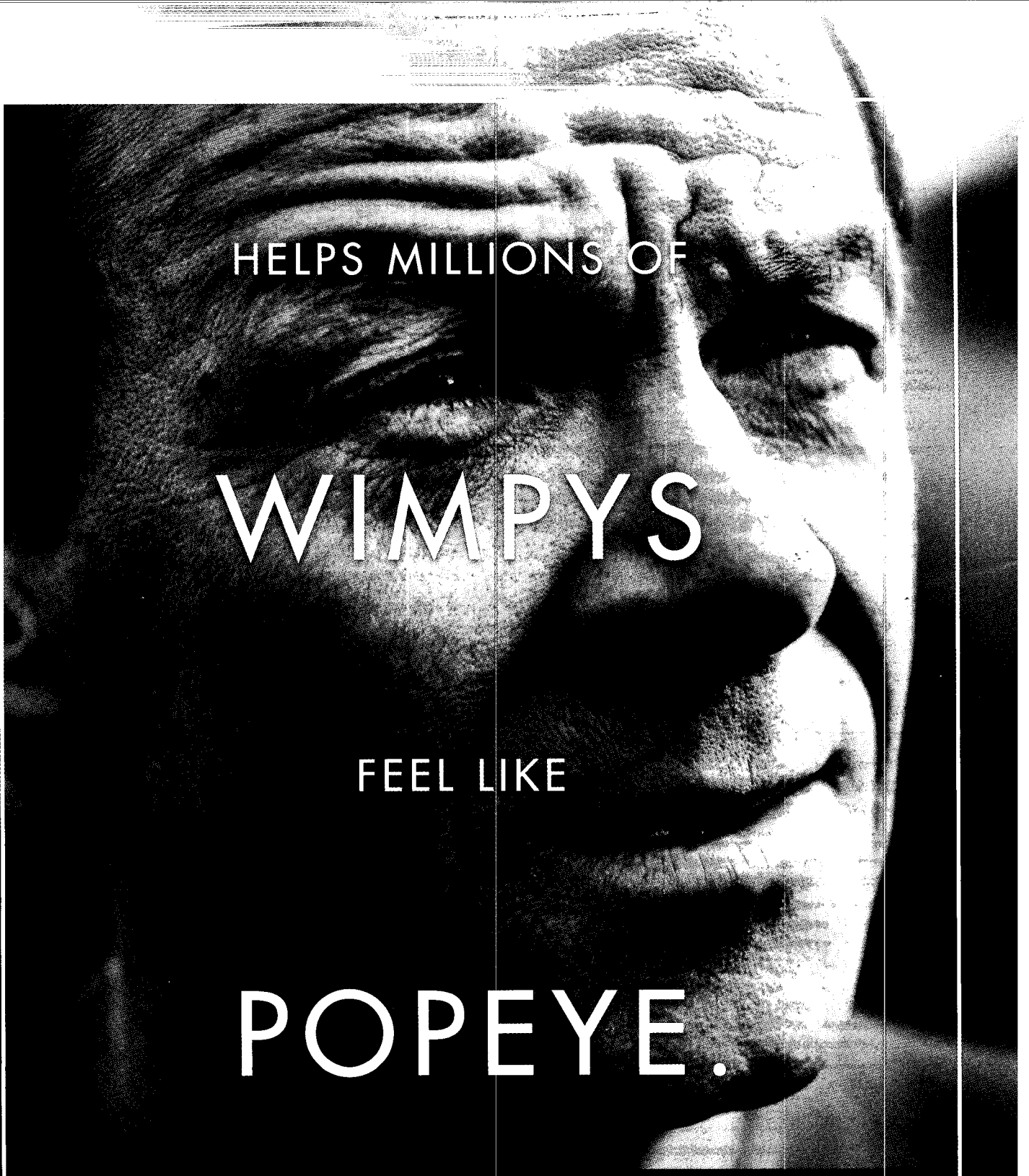
- ❑ Fellowships are for students who have a clearly demonstrated interest in the classical liberal/libertarian tradition of individual rights and market economies, and are studying in the U.S. or abroad.
- ❑ Awards are based on academic and/or professional performance, relevance of one's work to the advancement of a free society, and potential for success.
- ❑ All applicants will be considered without regard to race, creed, color, sex, national or ethnic origin, or handicap.
- ❑ Graduate students and undergraduates who will be juniors or seniors are eligible to apply.

IHS

For the Intellectual Adventure of a Lifetime

CALL 1 800 697-8799

ihs@gmu.edu http:www.TheIHS.org



As a world-class marathoner, he knew what it felt like to run out of gas during a race. So he cooked up a batch of low-fat, nutritious, sports energy bars in his Berkeley kitchen. Selling them out of the trunk of his '64 Falcon, he created a healthy following among athletes. And his own dynamic company, *PowerBar, Inc.* With over $100 million in sales. Fearless entrepreneurs like Brian Maxwell find a kindred spirit in Forbes. The business magazine that explores new trends and ideas while others rehash the past.

Forbes
CAPITALISTS TOOL

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED